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Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

IN THE MATTER OF: :  
: Docket No.  
Phase II Distribution : 2012-6  
of the 2004-2009 :  
Cable Royalty Funds : CRB CD  
: 2004-09  
: (Phase II)  
:  
:  
IN THE MATTER OF: :  
: Docket No.  
Phase II Distribution : 2012-7  
of the 1999-2009 :  
Satellite Royalty Funds : CRB SD  
: 1999-2009  
: (Phase II)  
:  
:  
Volume 5

Monday,  
December 15, 2014

Room LM-403  
Madison Building  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:07 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT  
THE HONORABLE JESSE FEDER  
THE HONORABLE DAVID R. STRICKLER  
Copyright Royalty Judges

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:07 a.m.

3 JUDGE BARRETT: Good morning, all.

4 Please be seated. We began with a total

5 allotment of 26 1/2 hours, which I was rounding

6 up to 27 in my head which would be nine hours per

7 party. I don't know what you agreed to, but I

8 don't care. We don't care what you agreed to, as

9 long as we all come in under 27. But just so you

10 know where you stand, according to our rough cut,

11 MPAA has used approximately 7 hours and 40

12 minutes. IPG has used approximately 9 and 1/2

13 hours, and SDC has used approximately 2 hours and

14 40 minutes. And I didn't add those up, but I'm

15 sure they don't come to 26 or 27.

16 In my preoccupation with numbers, I

17 did not check to see where we left off on

18 Thursday. It appears --

19 MR. BOYDSTON: Your Honor, if I may?

20 JUDGE BARRETT: You may.

21 MR. BOYDSTON: Mr. Galaz was being

22 cross-examined, Mr. Olaniran just finished his

7

1 cross-examination, and Mr. MacLean was just about

2 to begin his.

3 JUDGE BARRETT: Thank you.

4 MR. OLANIRAN: May I, your Honor, with

5 respect to the time allotment?

6 JUDGE BARRETT: Yes.

7 MR. OLANIRAN: I think MPAA had about

8 six hours, was allotted about six hours in.

9 We've gone over that. We have some cross-

10 examination and the closing, so we would ask the

11 Judge to allow us just a little bit more time to

12 --

13 JUDGE BARRETT: Globally, what are you

14 looking at as far as completion of this hearing?

15 MR. BOYDSTON: I think today, I mean,

16 what we have today, just as an overview, is

17 finishing up Mr. Galaz's cross-examination. I

18 will have a short redirect. At that point, the

19 employer and supplier aspect will be closed, and

20 then we'll move over to the Devotional. As you

21 will recall, Devotional has already called their

22 first witness, Mr. Kowalski. They will then be

8

1 calling their other witness, which is Mr. Brown,

2 direct and cross. And I think that would be,

3 that's the only witness you're calling because we

4 stipulated as to the others.

5 At that point then, IPG would be

6 putting on its defense to the SDC rebuttal, which

7 will be Mr. Galaz, direct and cross. And then

8 that will be it because the IPG rebuttal to the

9 SDC is ten exhibits, which the SDC has agreed,

10 has stipulated their entry. And they're just

11 orders and things like that anyway, so there's

12 going to be nothing on that.

13 So that's what we have and then oral

14 arguments, so we should finish today.

15 MR. MACLEAN: Your Honor, if it would

16 help, the SDC -- we agreed to present our case in

17 six hours, plus one for opening and closing

18 statement. And if it would help everybody, we

19 will cede one hour to MPAA.

20 JUDGE BARRETT: I'm sure it's going to

21 work out, just as long as we don't run over into

22 the new year. Thank you.

9

1 Mr. Boydston, I believe it is Dr.  
2 Brown.  
3 MR. BOYDSTON: Thank you, your Honor.  
4 JUDGE BARRETT: So, Mr. MacLean, you  
5 wanted to cross-examine Mr. Galaz; is that  
6 correct?  
7 MR. MACLEAN: Yes, ma'am.  
8 JUDGE BARRETT: Or continue cross-  
9 examining.  
10 MR. MACLEAN: Yes, your Honor. Thank  
11 you.  
12 JUDGE BARRETT: Mr. Galaz, you remain  
13 under oath.  
14 CROSS-EXAMINATION  
15 BY MR. MACLEAN:  
16 Q Good morning, Mr. Galaz.  
17 A Morning.  
18 Q Just to bring us back to where we were  
19 when we left off last week, I believe you said  
20 that you are now aware of a relationship between  
21 Fox Family and Saban Entertainment?  
22 A No, I think that I testified earlier

10

1 that they license to each other, so Saban has  
2 licensed to Fox.  
3 Q But you are, at any rate, today you  
4 are aware of that?  
5 A Today, I am aware that Saban -- that  
6 is correct. And Saban also licensed to other  
7 parties, as well, so . . .  
8 Q And when did you become aware of this  
9 relationship between Fox Family and Saban?  
10 A Well, I'm not sure that's Fox Family  
11 that was, that I had any knowledge of. So I'm  
12 not sure that's the correct statement in my  
13 testimony.  
14 Q Okay. Well, you are aware, of course,  
15 that Fox Family and Saban merged with ABC in  
16 2001, correct?  
17 A I'm not sure.  
18 Q Okay. So then I guess I don't  
19 understand. Why is -- you testified you  
20 conducted the research that's reflected in IPG  
21 125, correct? These copyright public catalog  
22 printouts.

11

1 A Okay. Yes, I was the one that ran the  
2 searches on these and pulled these up.  
3 Q So why is this second page here,  
4 copyright claimant Saban Entertainment? I  
5 thought that you were making a challenge to  
6 MPAA's claim on behalf of ABC.  
7 A Power Rangers was, Power Rangers is  
8 identified as the owner of copyright. There's no  
9 indication in any of the other, at least online,  
10 references to Power Rangers, with the Copyright  
11 Office of any assignment of those rights, and I  
12 guess it was to make the point that the copyright  
13 registration is prima facie evidence of copyright  
14 ownership.  
15 Q So you include this claim,  
16 notwithstanding your awareness of Saban's  
17 relationship with Fox Family?  
18 A Well, when you say relationship, then  
19 either the license, I mean, whether they -- that  
20 doesn't suggest that there's been a conveyance of  
21 copyright. A relationship -- I work for Film  
22 Roman. We had a relationship with CBS and ABC

12

1 and Fox because we licensed to them, so it  
2 doesn't, even though we weren't necessarily  
3 conveying copyright to any of the works that we  
4 had.  
5 MR. MACLEAN: No further questions.  
6 JUDGE BARRETT: Redirect, Mr.  
7 Boydston?  
8 MR. BOYDSTON: Thank you, your Honor.  
9 REDIRECT EXAMINATION  
10 BY MR. BOYDSTON:  
11 Q Mr. Galaz, you testified about several  
12 documents, including the one that you were just  
13 being asked about, that were obtained from the  
14 Copyright Office website. You're familiar with  
15 those, including the one in front of you now that  
16 you were just being questioned on?  
17 A Yes.  
18 Q Now, specifically with regard to  
19 Exhibits 21, 22, 24, 25, and 26, those are all  
20 the same sort of document taken off the copyright  
21 website, correct?  
22 A That's correct.

13

1 Q Now, in Exhibit 105, Exhibit 105  
2 comprises a bunch of documents which, at least in  
3 theory, are being offered to corroborate IPG's  
4 representation of various entities, correct?

5 A Yes. This is, if you look at 115,  
6 which summarizes everything, this is the catalog,  
7 item 9 catalog research by IPG and third parties  
8 in copyright mortgages.

9 Q Now, the clarification I'm asking for  
10 is do Exhibits 21, 22, 24, 25, and 26, i.e. the  
11 Copyright Office printouts from the web, are  
12 those inclusive, are those included in Exhibit  
13 105, or do they stand separate?

14 A No, and that's what threw me last week  
15 about Judge Strickler's question because I wasn't  
16 sure if they were included in there. And I went  
17 back over the weekend and I confirmed for my own  
18 satisfaction that none of the online  
19 registrations that have been admitted as exhibits  
20 here actually appear in item 9.

21 Q When you say item 9, what's the  
22 exhibit --

14

1 A Exhibit 105.

2 Q Okay.

3 A So even though they corroborate what's  
4 in 105, they weren't actually in 105.

5 Q And are they addressed, are they  
6 cross-referenced, if you will, in Exhibit 115,  
7 the chart, the IPG chart?

8 A No, they're not. They're not cross-  
9 referenced there.

10 Q So they're in addition to what the 115  
11 chart directs someone to?

12 A That's correct.

13 Q Okay. Now, with regard to Exhibit  
14 125, that also is a similar document printed out  
15 from the CRB website. Now, just to clarify, the  
16 entities that are referenced in the printouts  
17 that are Exhibit 125, are those, do those have  
18 anything to do with IPG claimants?

19 A They're not IPG claimants. They're  
20 just claimants that I recognized from my  
21 background experience were owned by third  
22 parties. So they also wouldn't be referenced in

15

1 115.

2 Q Okay. Switching subjects, let's talk  
3 about Worldwide Pants. You'll recall there's a  
4 declaration by Fred Nigro of Worldwide Pants, and  
5 he references a recision letter from Worldwide  
6 Pants, and there was a question raised about  
7 whether or not that was produced by IPG in  
8 discovery. Do you recall whether or not IPG  
9 produced that recision letter in discovery?

10 A We didn't.

11 Q And why didn't --

12 A I didn't have it. I had understood  
13 the date by which there had been a determination,  
14 but it was a letter, actually, it says it was  
15 sent to me. It was sent to a Beverly Hills  
16 address I think two or three years after I had  
17 already been living in Texas, so I presume that  
18 Marian Oshita attended.

19 Q Okay. And there was also a reference  
20 in the declaration by Mr. Nigro. Mr. Nigro said  
21 that he had, that he had contacted counsel for  
22 IPG. I think he meant me. Do you have any

16

1 recollection of whether or not that took place?

2 A I know for a fact that it did not  
3 occur because the first indication that we ever  
4 had that Worldwide Pants was not going to  
5 cooperate and acknowledge our representation for  
6 any years was in May 2014.

7 MR. MACLEAN: Objection. Move to  
8 strike as non-responsive. The question was does  
9 he recall the --

10 JUDGE BARRETT: Sustained.

11 BY MR. BOYDSTON:

12 Q Let me direct your attention to the  
13 exhibit, Exhibit 360, which was an MPAA exhibit  
14 added in in addition to the MPAA binder exhibits.

15 JUDGE BARRETT: I'm sorry. Could you  
16 give me the number again?

17 MR. BOYDSTON: 360.

18 BY MR. BOYDSTON:

19 Q It's an email stream in July and  
20 August of 2011, which starts at the end, the way  
21 email streams do, with an email from Ashley  
22 Morgan of Amity Media Productions --

17

1 A Okay.

2 Q -- to an email address that's

3 contactus.mpa. And it's essentially saying I

4 just received a letter for Worldwide Subsidy

5 Group, San Antonio. She goes on to say,

6 essentially, I don't know who these people are.

7 And then Mr. Olaniran responds to her and then

8 there's some back and forth and eventually --

9 well, that's essentially what the email stream

10 is.

11 My question to you is does IPG

12 represent Amity Media Productions?

13 A Yes, we do.

14 Q And are you familiar with Ashley

15 Morgan?

16 A No, I'm not.

17 Q And Ms. Morgan, obviously, seems, you

18 know, received a letter from IPG and seems

19 surprised and seemed like she didn't know who IPG

20 was.

21 A Right.

22 Q Any explanation for that?

18

1 A Yes. IPG was engaged through

2 Beckmann. That document actually appears in the

3 exhibits, if you were to look at 115. It wasn't

4 cited for this reason because Amity Media was not

5 challenged by the -- the MPAA did not challenge

6 Amity Media. But the same documents that apply

7 to Amity Media apply to other parties, so if you

8 were to look at Exhibit 115, you'll see a

9 reference to, for instance, Atlantic Film

10 Partners and Inca Productions. Both of those,

11 their engagement was vis a vis Beckmann

12 International. And if you look through item four

13 for both of those -- I'm looking for it right now

14 -- it would be IPG Exhibit 101 at pages 3057 to

15 3059. I actually think it's 3059, and that's

16 where Amity Media is referenced. So I can only

17 presume that Ms. Morgan just wasn't aware of

18 that.

19 JUDGE BARRETT: Sustained.

20 BY MR. BOYDSTON:

21 Q Has Amity, through Beckmann,

22 cooperated with IPG in these proceedings?

19

1 A I don't recall if we've gotten

2 anything directly from Amity. We have received

3 information directly through Beckmann, and

4 they've cooperated.

5 Q And the information that you refer to

6 that you received from Beckmann, has it been

7 information about Amity?

8 A Yes, and --

9 Q In the report, I mean.

10 A Yes.

11 Q Just a little housekeeping thing,

12 there was a piece of correspondence addressed, it

13 was I think a mass email, but there was

14 specifically one of them addressed to a Jean

15 McBride of Paramount. Do you know why IPG was

16 sending something to Jean McBride of Paramount?

17 A Yes, because Paramount is the

18 successor in interest to DreamWorks. I think

19 they acquired DreamWorks around 2004 or 2005. I

20 don't know exactly when. But, consequently, the

21 contact information that we had for DreamWorks

22 who we had represented in certain years was then

20

1 Jean McBride of Paramount. So, consequently,

2 even though we realized MPAA represents

3 Paramount, we're obligated to send the same

4 information to our adversary in that case,

5 Paramount, because they're the successor in

6 interest to DreamWorks.

7 Q Now, a comment was made about whether

8 or not, or a question was made about whether or

9 not there had been an update of an address for

10 DreamWorks being a claimant and now being

11 succeeded by Paramount. Are you aware of any

12 updated address information?

13 A I'm not aware of a single part in

14 these proceedings ever making a filing updating

15 their address. And if that were the case,

16 DreamWorks' claims would be in violation because

17 of the change of their address that's never been

18 updated.

19 Q Well, let me ask you to take a look at

20 Exhibit 333. And 333 is, we won't have to go

21 into too much detail about it, but 333 was the

22 cover letter that the MPAA, it was the cover

21

1 letter to the MPAA's Excel spreadsheet we spent a  
2 lot of time chatting about that was created in  
3 response to the order of July 30th. And as you  
4 look to it, let me just ask, generally, did the  
5 MPAA either in that letter or in any other way  
6 ever inform you that the Excel spreadsheet it was  
7 creating might not be accurate?

8 A No.

9 Q And do you now have doubt as to --  
10 well, strike that. After you got the spreadsheet  
11 produced in response to the July 30th letter, did  
12 you feel like you had reason to believe that it  
13 was accurate?

14 A Yes.

15 Q And why is that?

16 A Well, the entire purpose of our  
17 request in the order was to couple which  
18 claimants were making claim for which programs.  
19 That was the whole point of the spreadsheet. So  
20 if they give us a spreadsheet that does that,  
21 without any qualification like, oh, by the way,  
22 you've got to go input additional data from

22

1 10,000 pages of certifications, I would have  
2 found it implausible that they wouldn't have that  
3 to begin with. But in any event, that wasn't  
4 communicated to us, so we had no reason to  
5 believe that the information in the spreadsheet  
6 was inaccurate.

7 Q Now, later on in these proceedings,  
8 the parties will be taking the various program  
9 lists from each entity here and attempting to use  
10 a methodology to come up with a distribution  
11 plan, if you will, or calculation. At this point  
12 in time, based upon the testimony that you've  
13 heard here regarding the spreadsheet and  
14 regarding Appendix A and B to Ms. Saunders'  
15 declaration, is IPG aware of how to go about  
16 doing that with regard to the MPAA program?

17 MR. MACLEAN: Objection, relevance for  
18 this proceeding.

19 JUDGE BARRETT: Sustained.

20 MR. BOYDSTON: Well, your Honor, the  
21 relevance is that I'm trying to establish as to  
22 whether or not IPG has the ability to do that or

23

1 not, based upon what's been produced so far.

2 JUDGE BARRETT: I heard the question,  
3 Mr. Boydston. It's still not relevant.

4 MR. BOYDSTON: Okay.

5 BY MR. BOYDSTON:

6 Q Are you familiar with the MPAA  
7 certifications that we've seen in this  
8 proceeding?

9 A As a general document, yes.

10 Q And are you familiar with the length  
11 of the certifications --

12 A Yes.

13 Q -- in terms of pages?

14 A Yes.

15 Q And how do you have that knowledge?

16 A Actually, I just turned away from the  
17 document that maybe not this one but other  
18 documents that were provided to IPG from MPAA  
19 counsel when they produced their documents, their  
20 hard copy documents, Bates stamp numbers them.  
21 And from my recollection, it was something like  
22 5,800 for satellite certifications and 3,300

24

1 pages for cable. It was, roughly, 10,000 pages  
2 of hard copy documents that were certifications.

3 Q And at this point in time, absent an  
4 electronic record of those, is there any way to  
5 use those other than re-typing them?

6 A No.

7 JUDGE STRICKLER: If I may interject,  
8 counsel. Mr. Galaz, taking a look again at  
9 Exhibit 333, which you have in front of you I  
10 think. That's the August 11th letter from  
11 Mitchell Silberberg.

12 MR. GALAZ: Yes.

13 JUDGE STRICKLER: The second  
14 paragraph, next to the last sentence, says, "All  
15 these documents are attorney work product and are  
16 privileged documents." Do you see that?

17 MR. GALAZ: Yes.

18 JUDGE STRICKLER: Did you have access  
19 personally, I mean through counsel, but personal  
20 access to the documents that are identified in  
21 that paragraph, which includes -- let's take them  
22 one by one -- the Excel spreadsheet?

25

1 MR. GALAZ: Did I have access --  
 2 you're talking about the Excel spreadsheet that  
 3 they produced?  
 4 JUDGE STRICKLER: Right, yes.  
 5 MR. GALAZ: Yes. When they produced  
 6 it here, that's when we had access to it.  
 7 JUDGE STRICKLER: Let me stop  
 8 questioning you for a second and ask counsel of  
 9 MPAA. In that paragraph where you say all of  
 10 these documents are attorney work product and are  
 11 privileged documents, did you intend to have them  
 12 not produced, disclosed to Mr. Galaz and produced  
 13 only to Mr. Boydston?  
 14 MS. PLOVNIK: No, your Honor. We  
 15 expected that they would be produced to IPG. We  
 16 just explained that we designated them as  
 17 restricted because they were work product, and so  
 18 we put a restricted label on the electronic  
 19 files. That's what we intended to do.  
 20 JUDGE STRICKLER: But even though they  
 21 were attorney work -- just this attorney work --  
 22 okay.

26

1 MS. PLOVNIK: Yes. And that was  
 2 regarding the electronic copies of Appendices A  
 3 and B, which were also produced through this and  
 4 the Excel file.  
 5 JUDGE STRICKLER: So all of the  
 6 documents that are identified in that paragraph  
 7 in Exhibit 333 were intended for Mr. Galaz and  
 8 Mr. Boydston both to see?  
 9 MS. PLOVNIK: We expected that -- I  
 10 mean, Mr. Boydston says whatever, you know, we  
 11 produced them to Mr. Boydston but we did not  
 12 intend to create a restriction by that.  
 13 JUDGE STRICKLER: Okay, thank you. I  
 14 have no further questions.  
 15 MR. BOYDSTON: Thank you. I have no  
 16 further questions, but, your Honor, I questioned  
 17 Ms. Saunders about, it would have been marked as  
 18 Exhibit 127, and I questioned Mr. Galaz who  
 19 actually created the document. I never moved  
 20 that and asked that it be admitted into evidence,  
 21 and I do so now. That was Exhibit 127, which was  
 22 a chart, it's a chart that has the relevant years

27

1 written in handwriting on the lower left side, if  
 2 that helps. But it was marked 127.  
 3 JUDGE BARRETT: It was offered and  
 4 refused.  
 5 MS. PLOVNIK: That was my  
 6 recollection.  
 7 MR. BOYDSTON: I stand corrected then.  
 8 I didn't recall what happened. It wasn't in it.  
 9 JUDGE BARRETT: You don't have that?  
 10 Oh, well, it was offered and refused, according  
 11 to my notes.  
 12 MR. BOYDSTON: Okay.  
 13 JUDGE FEDER: Mine, as well.  
 14 MR. BOYDSTON: Then I have nothing  
 15 further.  
 16 JUDGE BARRETT: Okay.  
 17 MR. OLANIRAN: I have two purposes.  
 18 I'd like to ask Mr. Galaz a few questions. One,  
 19 just a quick re-cross on the questioning he had  
 20 with Mr. Boydston and Mr. MacLean. And remember  
 21 last week, we had received a stack of documents,  
 22 and you said you would allow us -- I just have a

28

1 few questions about those documents.  
 2 MR. BOYDSTON: I'm sorry. I missed  
 3 the last part.  
 4 MR. OLANIRAN: We had received a stack  
 5 of representation agreements on November 30th,  
 6 and the Judge, Judge Barrett, told us last week  
 7 she would give us some time to ask a few  
 8 questions, and I'd like to do that at this time.  
 9 JUDGE BARRETT: Okay.  
 10 MR. OLANIRAN: Thank you, your Honor.  
 11 JUDGE BARRETT: They were marked as an  
 12 exhibit, I believe.  
 13 MS. PLOVNIK: Your Honor, they were  
 14 the very last part of IPG's. I think it was  
 15 Exhibit 101, and let me, let's confirm. It was  
 16 the very last section of that. It's right here.  
 17 It's the ones with the handwritten Bates stamp  
 18 numbers at the end of Exhibit 101, IPG 101.  
 19 JUDGE BARRETT: Okay, thank you.  
 20 There's also an open question on Exhibit 122, but  
 21 we'll get to that. Exhibit 122, we still have  
 22 an open question on that one, I believe. Mr.

29

1 Olaniran?

2 MR. OLANIRAN: Thank you, your Honor.

3 RE-CROSS-EXAMINATION

4 BY MR. OLANIRAN:

5 Q Good morning, Mr. Galaz. Greg  
6 Olaniran for MPAA.

7 A Good morning.

8 Q I just wanted to ask you just a couple  
9 of questions on the Excel spreadsheet. The Excel  
10 spreadsheet was produced following the July 30th  
11 order, correct?

12 A That's correct.

13 Q And prior to that order, you had  
14 received MPAA certifications, correct?

15 A The hard copies, the 10,000 pages,  
16 correct.

17 Q Okay. And you --

18 A We received that electronically.

19 Q And you also had Ms. Saunders' written  
20 direct testimony which contained the two  
21 appendices for cable and satellite, correct?

22 A Correct.

30

1 Q And prior to the motions of process,  
2 MPAA had represented to you that those were the  
3 documents underlying the titles that MPAA was  
4 claiming, correct?

5 A Correct.

6 Q Okay. So before the July 30th order,  
7 you had those three documents which established  
8 MPAA's title claims, correct?

9 A Correct.

10 Q And when you received the Excel  
11 spreadsheet, you chose to rely exclusively on  
12 that spreadsheet as representative of what MPAA's  
13 title claims were?

14 A Correct.

15 Q Okay.

16 JUDGE STRICKLER: A question, Mr.  
17 Galaz. After you looked at the spreadsheet to  
18 see what MPAA was claiming, when you saw things  
19 that you thought were not proper claims, did you  
20 attempt to cross-reference what you saw in this  
21 spreadsheet with Appendices A or B of Ms.  
22 Saunders' testimony to see whether or not her

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1 testimony, in fact, included those claims?

2 MR. GALAZ: No, because the Excel  
3 spreadsheet was the only document that we  
4 received or have received up until this point  
5 that actually couples the claimant with the  
6 program. So if you look at Appendix A and  
7 Appendix B to Mr. Saunders' testimony, it says  
8 these are the claimants. That's Appendix A.  
9 Appendix B says these are the programs, but  
10 there's nothing that indicates which are making  
11 claim for which, other than if you were to go  
12 through and look on a line-by-line basis the  
13 10,000 pages and make some comparison and type it  
14 in yourself. We found it implausible, especially  
15 because we know that they advance monies to these  
16 parties on a percentage basis, that there was no  
17 document out there that actually couples, whether  
18 a hard copy or electronic but we presume it would  
19 be electronic, that actually couples the program  
20 with the claimant. That was the purpose of our  
21 motion, and that's what we thought we had  
22 received.

32

1 JUDGE STRICKLER: So when you received  
2 the electronic spreadsheet that coupled the  
3 program with the claimant and saw what you  
4 understood to be improper claims for titles, were  
5 you capable then of taking that finite set of  
6 those that you identified as allegedly improper  
7 and then going back to Appendix A and B and  
8 seeing, so you wouldn't have to go through all of  
9 the thousands of titles there. You could just  
10 focus on the ones that you thought were improper.

11 Let me ask you this: did you  
12 understand that you had the capability to do that  
13 more circumscribed activity?

14 MR. GALAZ: If I understand your  
15 question, what we did when we got the Excel  
16 spreadsheet was make a comparison with IPG  
17 claimed programs and then just eyeballing it to  
18 see that. And so that was a comparison between  
19 the MPAA's Excel spreadsheet and IPG's data. If  
20 you're, and I think you may be asking whether we  
21 took the Excel spreadsheet and compared that to  
22 the information --



33

1 JUDGE STRICKLER: Let me interrupt  
2 you. You're on the right track there. If you  
3 took the data from the Excel spreadsheet that you  
4 had identified as allegedly improper claims for  
5 claimants after you looked at your IPG data to  
6 make that determination in your own mind, did you  
7 then say, well, let me see if those are, in fact,  
8 titles and claims together or titles or claims  
9 identified in either Appendix A or Appendix B?

10 MR. GALAZ: Well, obviously, they  
11 wouldn't be titled --

12 JUDGE STRICKLER: Not together.

13 MR. GALAZ: -- but separate and, if I  
14 could have an example, the "Outdoorsman" with  
15 Buck McNeely. Did we, you know, in the Excel  
16 spreadsheet, finding that there was a claim for  
17 the "Outdoorsman" for Buck McNeely that's being  
18 attributed to screen rights in Australia, did we  
19 then look at Appendix B to see whether the  
20 "Outdoorsman with Buck McNeely" appears thereon?  
21 We didn't. We didn't think there was any reason  
22 to, but it would have been difficult anyway

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1 because of the way that it's actually arranged.

2 The Appendix B, there's hard copies of  
3 the programs for 2000, 2001, 2002, 2003,  
4 etcetera, etcetera. And if I recall, there's at  
5 least three and maybe even more lines of  
6 information in very small font. It would have  
7 been going back through that 100-page document  
8 and going down and finding it. So that just  
9 didn't seem practical, and it didn't seem  
10 necessary because we simply thought that what was  
11 being provided to us was what was ordered, which  
12 was a pairing of the program and the claimant.

13 JUDGE STRICKLER: Okay, thank you.

14 BY MR. OLANIRAN:

15 Q Just a quick follow-up on that. The  
16 two appendices B were in alphabetical order, were  
17 they not?

18 A Yes, they are alphabetical order.

19 Q And you were also provided electronic  
20 copies in searchable form, were you not?

21 A I think when we got this last -- at  
22 the same time that we received the Excel

35

1 spreadsheet, and it's this exhibit that's your  
2 cover letter, it indicates that it also attached  
3 now in a searchable form the Appendix A and the  
4 Appendix B.

5 Q And that would have been the time that  
6 you would have needed to do the search based on  
7 the questioning that Judge Strickler just --

8 A Of course, if there was any  
9 understanding that there was a discrepancy  
10 between the Excel spreadsheet and the 10,000  
11 pages of certifications, then yes. But there  
12 wasn't.

13 Q Okay. I wanted to ask you just a  
14 couple of questions in the exchange you had with  
15 Mr. MacLean. You said that the copyright  
16 registration was evidence of ownership. Do you  
17 recall that?

18 A I think it's prima facie evidence of  
19 ownership.

20 Q Those were your words. And you were  
21 talking with respect to Exhibit IPG 125. You  
22 actually haven't produced the actual registration

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1 certificates in this proceeding for any title,  
2 have you?

3 A No, we've just relied on the online  
4 searches. That's correct.

5 Q And you're certainly not suggesting  
6 that evidence of ownership is the same as  
7 evidence of entitlement to retransmission  
8 royalties in this proceeding, are you?

9 A Well, an owner is entitled to make  
10 claims. So unless they've assigned that right or  
11 granted it to an agent, then I think so.

12 Q Okay. So can you look at the searches  
13 from a public catalog or even the actual  
14 registration certificate and determine whether  
15 the owner has assigned the right?

16 A The short answer is no.

17 Q Okay.

18 A You cannot definitively tell.

19 MR. OLANIRAN: I have no further  
20 questions, your Honor.

21 JUDGE BARRETT: Anything further?

22 MR. OLANIRAN: Oh, one more.

37

1 JUDGE BARRETT: Mr. Olaniran?

2 MR. OLANIRAN: It's Monday morning.

3 BY MR. OLANIRAN:

4 Q With regard to the -- Mr. Boydston  
5 provided a bunch of rep agreements on November  
6 30th, and those rep agreements had not been  
7 produced to MPAA prior to that.

8 A Just -- I'm sorry. Go ahead.

9 Q Yes. And my question is when did IPG  
10 discover those documents?

11 A Well, I think they had been produced  
12 but in the prior proceeding. That was my  
13 understanding. I can tell you exactly because I  
14 discovered it over the Thanksgiving break, and  
15 that was T.M.I. But my background information  
16 about my back being thrown out for several weeks  
17 and, consequently, it was when I was going  
18 through and identifying what had been produced in  
19 this particular proceeding, specifically the  
20 contracts that had already been produced, that's  
21 when I found out that they weren't in what is now  
22 101. They, I believe, were produced in the prior

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1 proceeding and somehow or another didn't get in  
2 this proceeding, or if they did then I don't have  
3 reference of it within my files. So that's what  
4 those were. But it was during, it was during  
5 Thanksgiving week. It was literally the day that  
6 I discovered it, I compiled it, sent it to Brian  
7 and had him email it to the MPAA, email it to  
8 you.

9 Q So you discovered that they had not  
10 been produced in this proceeding, correct?

11 A I believe -- well, I have to qualify  
12 my answer because I wasn't sure whether my  
13 records were full with where I was. I was also  
14 traveling at the time. And from what I had on my  
15 computer, they did not appear to be within the  
16 document that we had initially identified as item  
17 four and produced as item four. So --

18 MR. OLANIRAN: Move to strike. It's  
19 non-responsive, you know.

20 BY MR. OLANIRAN:

21 Q I just wanted to know did you discover  
22 that they had not been critiqued?

39

1 A And I guess the short answer is I

2 don't know whether or not they were produced or  
3 not for certain.

4 Q I'm completely confused.

5 A That's why I was trying to explain so  
6 . . .

7 Q But it was your determination, you  
8 determined that MPAA needed to receive this  
9 representation agreement, even though you were  
10 not sure that they had been produced; is that  
11 your testimony?

12 A Correct.

13 Q Okay. And you were certain that they  
14 had been produced in another proceeding?

15 A Yes.

16 Q To MPAA?

17 A Yes.

18 Q And which proceeding was that?

19 A That would have been the 2000 and 2003  
20 proceeding.

21 Q Would it surprise you that they were  
22 not produced in that proceeding either?

40

1 A Very much so.

2 Q Okay. With respect to the documents  
3 that were produced, you produced a letter of  
4 extension for Direct Cinema. You can look at  
5 Exhibit 101, the handwritten Bates stamp number  
6 516, I think. There may be another number. I  
7 read the first three letters. 5169.

8 A Okay.

9 Q See the letter of extension?

10 A Yes.

11 Q Is that the only document you have  
12 produced with respect to substantiate IPG's  
13 representation of Direct Cinema?

14 A I would have to look at 115 in order  
15 to determine that. No.

16 Q But that is the only item, that is --  
17 page 5169 is the only item that you're shown  
18 under representation agreement on item four.

19 A I think your question -- maybe I  
20 misheard your question. I thought you asked if  
21 that's the only document that we've produced.  
22 And what we've also produced is correspondence

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1 from Direct Cinema regarding their works.

2 Q My first question was, I was just  
3 confirming that, with respect to representation  
4 agreements, 5169 is the only document you've --

5 A That's correct, and that's what 115  
6 says. So we don't have the mandate agreement.  
7 We have the extension agreement that refers to  
8 the mandate agreement, but we don't have the  
9 mandate agreement.

10 MR. OLANIRAN: No further questions,  
11 your Honor. Thank you.

12 MR. MACLEAN: A very brief follow-up  
13 with respect to these additional documents. Your  
14 Honor, may I conduct this examination from here?

15 JUDGE BARRETT: As long as the court  
16 reporter can hear you.

17 MR. MACLEAN: Okay.

18 CROSS-EXAMINATION

19 BY MR. MACLEAN:

20 Q Mr. Galaz, with regard to these  
21 representation agreements at the end of IPG  
22 Exhibit 101, the hand-marked Bates numbers are

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1 JUDGE BARRETT: Thank you, Mr. Galaz.  
2 You may step down.

3 MR. BOYDSTON: That concludes IPG's  
4 testimony regarding the MPAA, or, no, I guess it  
5 was our -- we're following the MPAA. Sorry. I  
6 think that concludes that program suppliers.

7 JUDGE BARRETT: Could we take a look  
8 at Exhibit 122? It was the fifth document that  
9 you had to search for a three-hole paper for? Do  
10 you remember that one?

11 MR. BOYDSTON: Yes, I do.

12 JUDGE BARRETT: And what were the  
13 circumstances of that, and has it been offered,  
14 will it be offered? Is there an objection?

15 MR. BOYDSTON: I thought that it had  
16 been offered and admitted, but if I'm wrong I  
17 would like to --

18 JUDGE BARRETT: Okay. The Court  
19 agrees with you, Mr. Boydston. 122 is admitted,  
20 and that settles that.

21 (Whereupon, IPG Exhibit No. 122  
22 was received into evidence.)

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1 the ones that you discovered during Thanksgiving  
2 weekend may not have been produced in these  
3 proceedings; is that right?

4 A Correct.

5 Q And then you had them, at that point,  
6 produced to MPAA; is that right?

7 A That's correct.

8 Q You did not have them produced to the  
9 SDC at that time, did you?

10 A I know that they don't have -- no, not  
11 Devotional, but I don't think so.

12 Q And that is in spite of an order from  
13 this Board that everything produced, IPG produces  
14 to the MPAA is also to be produced to the SDC; is  
15 that right?

16 A I'm sure it was an oversight, but yes.

17 MR. MACLEAN: No further questions.

18 COURT REPORTER: I'm sorry, sir. Can  
19 you repeat that answer?

20 MR. GALAZ: I'm sure it was an  
21 oversight, but yes.

22 MR. BOYDSTON: Nothing, your Honor.

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1 JUDGE BARRETT: Mr. MacLean?

2 MR. MACLEAN: So, your Honor, the  
3 first thing I'd like to do, we've got a number of  
4 exhibits here for which we don't have a  
5 sponsoring witness, many of them produced by IPG.  
6 Some of them, we have stipulation with IPG, some  
7 of them we do not yet. What I'd like to do is  
8 move these exhibits into evidence, and it will be  
9 a little painful but I'd like to go one at a time  
10 so that we can ascertain to what extent we have  
11 an objection that we have to overcome.

12 So I'm just going to go through the  
13 SDC exhibit binder, and I'll start with SDC  
14 Exhibit 601, which is a copy of IPG's 1999  
15 satellite claim produced by IPG in discovery. I  
16 move Exhibit 601.

17 MR. BOYDSTON: No objection, your  
18 Honor.

19 JUDGE BARRETT: 601 is --

20 MS. PLOVNIK: No objection, your  
21 Honor.

22 JUDGE BARRETT: 601 is admitted.

45

1 (Whereupon, SDC Exhibit No. 601  
2 was received into evidence.)  
3 MR. MACLEAN: Go to SDC 603, which is  
4 a copy of the SDC's -- I'm sorry, the IPG's. I  
5 apologize. I believe this is satellite claims,  
6 as produced in discovery, for all the years at  
7 issue in this proceeding.  
8 JUDGE BARRETT: Did you say that's  
9 602?  
10 MR. MACLEAN: 603, your Honor.  
11 JUDGE BARRETT: Oh, three.  
12 MR. MACLEAN: I move 603 into  
13 evidence.  
14 MS. PLOVNICK: We have no objection.  
15 MR. BOYDSTON: No objection.  
16 JUDGE BARRETT: 603 is admitted.  
17 (Whereupon, SDC Exhibit No. 603  
18 was received into evidence.)  
19 MR. MACLEAN: SDC 604 is a copy of  
20 IPG's cable claims, as produced in discovery by  
21 IPG. I move SDC 604 into evidence.  
22 MR. BOYDSTON: No objection.

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1 MS. PLOVNICK: No objection, your  
2 Honor.  
3 JUDGE BARRETT: 604 is admitted.  
4 (Whereupon, SDC Exhibit No. 604  
5 was received into evidence.)  
6 MR. MACLEAN: SDC's 605 is IPG's  
7 mandate agreement with Envoy Productions produced  
8 by IPG in discovery. I move 605 into evidence.  
9 MR. BOYDSTON: I think it was  
10 admitted, but no objection.  
11 JUDGE BARRETT: It is admitted.  
12 MR. MACLEAN: Oh, I'm sorry. Okay,  
13 thank you. I believe SDC 606 is already  
14 admitted, correct? No? Okay.  
15 MR. BOYDSTON: No objection.  
16 MR. MACLEAN: 606 is IPG's purported  
17 representation agreement with IWV Media. I move  
18 606 into evidence.  
19 JUDGE BARRETT: 606 is admitted.  
20 (Whereupon, SDC Exhibit No. 606  
21 was received into evidence.)  
22 MR. MACLEAN: SDC 607 is IPG's

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1 purported mandate agreement with Salem Baptist  
2 Church. I move 606 into evidence. 607 into  
3 evidence. I'm sorry.  
4 MS. PLOVNICK: No objection.  
5 JUDGE BARRETT: 607 is admitted.  
6 (Whereupon, SDC Exhibit No. 607  
7 was received into evidence.)  
8 MR. MACLEAN: SDC Exhibit 608 is IPG's  
9 purported mandate agreement with Paradigm  
10 Pictures Corporation. We move SDC 608 into  
11 evidence.  
12 MR. BOYDSTON: No objection.  
13 MS. PLOVNICK: No objection.  
14 JUDGE BARRETT: 608 is admitted.  
15 (Whereupon, SDC Exhibit No. 608  
16 was received into evidence.)  
17 MR. MACLEAN: SDC 609 is a collection  
18 of IPG's purported mandate agreements with Billy  
19 Graham Evangelical Association, as produced in  
20 discovery. Move SDC 609 into evidence.  
21 MR. BOYDSTON: No objection.  
22 MS. PLOVNICK: No objection.

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1 MR. HARRINGTON: 609 is admitted.  
2 (Whereupon, SDC Exhibit No. 609  
3 was received into evidence.)  
4 MR. MACLEAN: I believe SDC 610 is  
5 already in evidence. Okay.  
6 MR. BOYDSTON: 610 has not been  
7 admitted, I believe.  
8 CLERK WHITTLE: Yes, it's been  
9 admitted.  
10 MR. MACLEAN: SDC 611 is a declaration  
11 of George Grange, Chip Grange, and an email  
12 attachment, I understand, from Mr. Boydston that  
13 he's willing to stipulate to the admission of  
14 this declaration. So I move SDC 611 into  
15 evidence.  
16 MR. BOYDSTON: Yes, so stipulated.  
17 JUDGE BARRETT: 611 is admitted.  
18 (Whereupon, SDC Exhibit No. 611  
19 was received into evidence.)  
20 MR. MACLEAN: SDC 612 is an amendment  
21 and attached declaration filed by It Is Written,  
22 Inc., with the Copyright Office. I move SDC 612

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1 into evidence.

2 MR. BOYDSTON: No objection.

3 MS. PLOVNICK: No objection.

4 JUDGE BARRETT: 612 is admitted.

5 (Whereupon, SDC Exhibit No. 612  
6 was received into evidence.)

7 MR. MACLEAN: SDC 613 is a public  
8 catalog, a Copyright Office public catalog search  
9 for the name "Adventis Media Center Productions"  
10 and some additional names that It Is Written --  
11 it's a collection of Copyright Office searches  
12 relating to IPG's claims to Adventis Media Center  
13 Productions.

14 MR. BOYDSTON: No objection.

15 MS. PLOVNICK: No objection.

16 JUDGE BARRETT: 613 is admitted.

17 (Whereupon, SDC Exhibit No. 613  
18 was received into evidence.)

19 MR. MACLEAN: SDC 614 is a Senate  
20 Finance Committee Majority Staff Report related  
21 to Kenneth Copeland Ministries. I move SDC 614  
22 into evidence.

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1 MR. BOYDSTON: Your Honor, we object  
2 to this document. As the panel may recall, I  
3 think it was certainly discussed and it was also  
4 admitted in the 1999 cable proceedings a couple  
5 of months ago. The basis for my objection is  
6 hearsay. On top of being hearsay, I think that  
7 they're receiving a finding in the prior matter  
8 that the judges observed that there's a number of  
9 reasons to question its reliability. It was not  
10 excluded from the prior proceeding, but, based  
11 upon the judges' ruling, it seems to me like  
12 there might be good grounds to exclude it.  
13 Therefore, I make the objection.

14 MR. MACLEAN: Your Honor, first of  
15 all, to the extent that this is hearsay, it is  
16 also a public record and, therefore, falls within  
17 an exception to the hearsay rule. I will say  
18 that this is not the kind of evidence that I  
19 would typically offer in a civil case. However,  
20 in this case where we lack subpoena power, where  
21 we've presented strong reason in this document to  
22 question the validity of Kenneth Copeland

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1 Ministries' claim to the Kenneth Copeland  
2 programs on the grounds that Kenneth Copeland and  
3 his wife Gloria Copeland, according to this  
4 document, their employment agreements retain the  
5 copyrights of their own works in their own names.

6 Moreover, there's information in this  
7 document relating to the efforts to which Kenneth  
8 Copeland Ministries goes to to keep its employees  
9 from divulging information about Kenneth Copeland  
10 Ministries, including such things as if Kenneth  
11 Copeland Ministries' employees cooperate with  
12 people trying to keep the information, including,  
13 in this case, the Senate Minority staff, that God  
14 will blight their finances and so forth, showing  
15 the lengths to which Kenneth Copeland Ministries  
16 will go to prevent us and others from learning  
17 about their operations.

18 So the document is relevant. I agree  
19 that there are some reasons to question it. And  
20 to that extent, it's very unfortunate that IPG  
21 and Kenneth Copeland Ministries have chosen not  
22 to present evidence and not to produce any

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1 evidence relating to the employment agreements  
2 that are at issue here to show that Kenneth  
3 Copeland Ministries actually owns the copyrights  
4 to the programs it claims, notwithstanding what  
5 appears in this report. So on that ground, I  
6 admit it, I offer it for admission and ask that  
7 the Board accept it.

8 MR. BOYDSTON: Your Honor, I  
9 understand the panel is very familiar with this  
10 document, and I won't belabor anything. I'll  
11 just submit my objection. There are things he  
12 said that I would disagree with, but we can leave  
13 that for another time.

14 JUDGE BARRETT: I'd like to reserve  
15 until I can talk with my colleagues about this  
16 particular exhibit, but we can go ahead with the  
17 rest.

18 MS. PLOVNICK: For the record, MPAA  
19 does not have an objection to this document.

20 JUDGE BARRETT: Thank you, Ms.  
21 Plovnick.

22 MR. MACLEAN: Your Honor, I'm moving

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1 now to SDC 616. This is a chart showing the  
2 organization of the, as we understand it, WCCI,  
3 which is the entity that IPG asserts is identical  
4 to Creflo Dollar Ministries showing the various  
5 organizations that appear on WCCI's  
6 organizational structure, corporate family  
7 structure. And this was produced from IPG in  
8 discovery. It was admitted into evidence in the  
9 199 proceedings, although as part of an IPG  
10 exhibit. I made the mistake last time of not  
11 moving it into exhibit evidence as a separate  
12 document, but I'm moving it into evidence now.  
13 SDC 616.

14 MR. BOYDSTON: No objection, your  
15 Honor.

16 MS. PLOVNIK: No objection.

17 JUDGE BARRETT: 616 is admitted.  
18 (Whereupon, SDC Exhibit No. 616  
19 was received into evidence.)

20 MR. MACLEAN: Your Honor, SDC 617 is  
21 a Georgia Secretary of State search with respect  
22 to Creflo Dollar and the entities with whom he is

55

1 this one among ourselves. This is 617?

2 MR. MACLEAN: 617.

3 JUDGE BARRETT: Reserve on that one.

4 MS. PLOVNIK: For the record, MPAA  
5 does not have an objection to this exhibit, so we  
6 would not object.

7 JUDGE BARRETT: Thank you.

8 MR. MACLEAN: And, your Honor, I'm not  
9 familiar with the prior ruling that Mr. Boydston  
10 is referring to. If there's a citation then --

11 MR. BOYDSTON: It was in the 1999  
12 cable proceeding that it came up and discussed by  
13 --

14 JUDGE BARRETT: Well, now would be a  
15 good time.

16 MR. BOYDSTON: I don't have it in my  
17 fingertips, but I know in the transcript. We've  
18 cited it before in papers, and we can find it.

19 JUDGE BARRETT: Okay, thank you.

20 MR. MACLEAN: SDC 618 is an  
21 application for registration of the fictitious  
22 name Benny Hinn Ministries produced by IPG in

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1 associated. I move 617 into evidence.

2 MR. BOYDSTON: Objection, your Honor.  
3 There is no sponsoring witness for this document,  
4 and it could be questioned. And, therefore, on  
5 that basis, we object.

6 MR. MACLEAN: Your Honor, I put my own  
7 name on our witness list for that eventuality.  
8 I will represent to the Court that I performed  
9 this particular search myself, and what appears  
10 here is the search results. I'm willing to take  
11 the stand. I personally think it's poor form to  
12 put an attorney on the stand or to insist that  
13 your opponent put an attorney on the stand.  
14 Nevertheless, I move it into evidence on the  
15 basis of my representation, but I'm willing to  
16 take the stand if necessary.

17 MR. BOYDSTON: Your Honor, there's  
18 been a ruling in a prior proceeding that counsel  
19 cannot be the sponsoring witness. Based on that,  
20 I don't think that Mr. MacLean is a proper  
21 sponsoring witness.

22 JUDGE BARRETT: We will also discuss

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1 discovery. I move 618 into evidence.

2 MR. BOYDSTON: No objection.

3 MS. PLOVNIK: No objection.

4 MR. HARRINGTON: 618 is admitted.  
5 (Whereupon, SDC Exhibit No. 618  
6 was received into evidence.)

7 MR. MACLEAN: And our SDC 619 is an  
8 excerpt from IPG's written direct statement in  
9 the 2000 to 2003 cable proceedings. And with  
10 respect to this one, I don't need the exhibit if  
11 IPG will stipulate, and I request this now, that  
12 IPG claimed the program "Singsation" and the  
13 claimant, Willie Wilson Productions, in the  
14 program supplier category in the 2000 to 2003  
15 cable proceedings.

16 MR. BOYDSTON: No objection to the  
17 document.

18 JUDGE BARRETT: Exhibit 619 is  
19 admitted.

20 (Whereupon, SDC Exhibit No. 619  
21 was received into evidence.)

22 MR. MACLEAN: SDC 622 is an

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1 acknowledgment of representation, purported to be  
2 an acknowledgment of representation from either  
3 Great Plains National Instructional Library or  
4 Restructure Holdings LLC produced by IPG in  
5 discovery. I move 622 into evidence.

6 MR. BOYDSTON: No objection.

7 JUDGE BARRETT: 622 is admitted.

8 (Whereupon, SDC Exhibit No. 622  
9 was received into evidence.)

10 MR. MACLEAN: SDC Exhibit 623 is an  
11 IMDB search for the results of the program title  
12 "Home Sweet Home." I move 623 into evidence.

13 MR. BOYDSTON: I object, your Honor.  
14 No sponsoring witness.

15 MR. MACLEAN: My response on this,  
16 your Honor, is the same as my response with  
17 respect to the Kenneth Copeland Ministry Georgia  
18 Department of State search.

19 JUDGE BARRETT: Thank you, Mr.  
20 MacLean. We will, likewise, reserve on that.

21 MR. MACLEAN: Yes, your Honor. Your  
22 Honor, SDC 624 is an excerpt from the spreadsheet

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1 everybody understands, as IPG has itself  
2 explained, that in this document -- of course,  
3 the full document is too voluminous to be offered  
4 in this, in the courtroom here. But in this  
5 document, IPG has a list of program titles, has a  
6 designation as to whether they claim these  
7 program titles in either the devotional or the  
8 program suppliers category. In some cases, they  
9 list both the devotional and program suppliers  
10 category and then a list of the claimants on  
11 whose behalf they're claimed.

12 Now, IPG has explained and we accept  
13 the explanation that a single title can refer to  
14 a single program or can refer to multiple  
15 programs. And where a title is designated for  
16 both the devotional category and the program  
17 suppliers category, it could mean either two  
18 different titles, one claimed in one category and  
19 the other claimed in the other category, or it  
20 could mean that they don't know which category it  
21 belongs in or if it could be both.

22 If I've misunderstood that, then I

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1 that IPG produced to us pairing its program  
2 titles with its claimants. I move SDC 624 into  
3 evidence.

4 MR. BOYDSTON: Your Honor, we object  
5 on the grounds there's no sponsoring witness.  
6 And I want to give a side explanation so you  
7 don't think we're being cute here. These are  
8 excerpts from our own document. However, the  
9 reason that we're objecting is that, because  
10 there's no sponsoring witness, we can't cross-  
11 examine someone from the SDC on their  
12 understanding about this. And our understanding  
13 is that the SDC misunderstands the document, and  
14 that's why there are no sponsoring witnesses of  
15 consequence because, if they had a sponsoring  
16 witness, I could then cross-examine them and  
17 hopefully, or theoretically anyway, explain that.  
18 So the objection is no sponsoring witness.

19 MR. MACLEAN: Your Honor, well, first  
20 of all, I'm not really sure our understanding of  
21 this document is relevant. However, I don't  
22 think there's any misunderstanding. I think

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1 would accept Mr. Boydston's explanation to the  
2 contrary. But I don't think there's a  
3 misunderstanding as to this document. And it is  
4 from IPG's own production. The only reason that  
5 we provide an excerpt, instead of the entire  
6 thing, because the entire thing would be too  
7 voluminous to be effectively used in these  
8 proceedings.

9 MS. PLOVNIK: Your Honor, MPAA does  
10 not have an objection to this exhibit. We just  
11 note that the judges' regulations, 351.10 through  
12 3 allows for summary exhibits when there's a  
13 voluminous original. It says, "The contents of  
14 voluminous writings, recordings, or photographs  
15 which cannot be conveniently examined in the  
16 hearing may be presented in the form of a chart  
17 summary or calculation. The originals or  
18 duplicates shall be made available for  
19 examination or copying or both by other parties  
20 at a reasonable time and place. The copyright  
21 royalty judges may order that they be produced in  
22 the hearing."

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1 So we would think this is an excerpt  
2 and that falls within the spirit of this portion.  
3 And so for that reason, we don't object. And I  
4 think the whole thing was produced in discovery,  
5 so all the parties can examine the whole thing.  
6 JUDGE BARRETT: Thank you.  
7 MR. BOYDSTON: I have no disagreement  
8 with what Ms. Plovnick said whatsoever. That is  
9 entirely correct. The objection is still just  
10 lack of a sponsoring witness.

11 JUDGE STRICKLER: Mr. Boydston, are  
12 you disputing the accuracy of anything in the  
13 document that Mr. MacLean purports to be a  
14 summary of your documents?

15 MR. BOYDSTON: No, not in the document  
16 itself. No, no, I do not.

17 JUDGE STRICKLER: So what part of the  
18 summary are you disputing?

19 MR. BOYDSTON: I'm not disputing any  
20 part of the summary. I'm simply, I'm disputing  
21 the procedural manner in which they're trying to  
22 admit it without a sponsoring witness. And,

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1 again, that's why I gave that explanation so I  
2 didn't appear to be a goofball. The reason why  
3 is because there's not someone here who says,  
4 well, I see this and it means this or I think it  
5 means that that I can then question.

6 Now, we can do this in argument and in  
7 post-trial briefing, as well. But from a  
8 technical standpoint, it seems we don't have a  
9 sponsoring witness. And here there's a  
10 particular consequence that I see. Now --

11 JUDGE BARRETT: Okay, thank you.  
12 Exhibit 624 is admitted.

13 (Whereupon, SDC Exhibit No. 624  
14 was received into evidence.)

15 JUDGE BARRETT: Mr. Boydston, you are  
16 more than welcome to put on your witness, if you  
17 think it is necessary, to rebut whatever it is  
18 you think SDC is concluding based on this  
19 document. You've indicated you think they  
20 misinterpreted it. Then you can put your witness  
21 on as a rebuttal witness to interpret it for us,  
22 so 624 is admitted.

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1 MR. MACLEAN: Your Honor, SDC 625 are  
2 IPG's responses to the Settling Devotional  
3 Claimants' discovery request. I move SDC 625  
4 into evidence.

5 MR. BOYDSTON: No objection.  
6 MS. PLOVNICK: No objection.  
7 JUDGE BARRETT: 625 is admitted.  
8 (Whereupon, SDC Exhibit No. 625  
9 was received into evidence.)

10 MR. MACLEAN: SDC 626 is a declaration  
11 of Dr. Erkan Erdem and an attached excerpt from  
12 data produced by IPG. I understand from Mr.  
13 Boydston that he stipulates to the admission of  
14 this declaration.

15 MR. BOYDSTON: Yes, I do.  
16 MR. HARRINGTON: Exhibit 626 is  
17 admitted.

18 (Whereupon, SDC Exhibit No. 626  
19 was received into evidence.)

20 MR. MACLEAN: SDC 627 is a collection  
21 of IPG representation agreements of claimants  
22 that it claims in the devotional category

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1 produced in discovery. I move SDC 627 into  
2 evidence.

3 MR. BOYDSTON: No objection.  
4 MS. PLOVNICK: No objection.  
5 JUDGE BARRETT: 627 is admitted.  
6 (Whereupon, SDC Exhibit No. 627  
7 was received into evidence.)

8 MR. MACLEAN: I believe SDC 628 is  
9 already in evidence. Could I confirm? 628 is  
10 not in evidence?

11 MR. BOYDSTON: No objection.  
12 MS. PLOVNICK: No objection.  
13 JUDGE BARRETT: Okay. Now it is if it  
14 wasn't before.

15 MR. MACLEAN: Thank you. SDC 629 is  
16 the testimony of Chandra Winford from the 1999  
17 proceedings testifying related to WCCI and Creflo  
18 Dollar, along with the exhibits admitted in  
19 connection with that testimony. I move SDC 629  
20 into evidence. And by the way, this was  
21 designated as part of our written rebuttal  
22 statement.



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1 MR. BOYDSTON: I have no objection, as  
2 long as it's the aggregate of the testimony. I  
3 think it is, but I want to know It's not  
4 excerpts, I believe.

5 MR. MACLEAN: I believe it's the  
6 entire testimony, your Honor.

7 MR. BOYDSTON: No objection.

8 JUDGE BARRETT: Okay. 629 is  
9 admitted.

10 (Whereupon, SDC Exhibit No. 629  
11 was received into evidence.)

12 MR. MACLEAN: Your Honor, just to get  
13 it out of the way, I'll move SDC 630 and 631 into  
14 evidence, which is basically our response to  
15 IPG's rebuttal against the SDC.

16 MR. BOYDSTON: No objection.

17 MS. PLOVNICK: No objection.

18 JUDGE BARRETT: 630 and 631 are  
19 admitted.

20 (Whereupon, SDC Exhibit Nos. 630  
21 and 631 were received into  
22 evidence.)

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1 MR. MACLEAN: Your Honor, the SDC  
2 rests.

3 JUDGE BARRETT: You are not calling a  
4 witness?

5 MR. MACLEAN: No, your Honor.

6 JUDGE BARRETT: Okay.

7 MR. BOYDSTON: Your Honor, I'd like to  
8 call Raul Galaz.

9 JUDGE BARRETT: Mr. Galaz, you remain  
10 under oath for quite a while.

11 MR. BOYDSTON: Your Honor, I know I  
12 haven't made it up there yet, but I'm trying to  
13 take advantage of dead space, if you will, while  
14 I get myself together. But there's something I  
15 want to launch anyway here. Something tells me  
16 the adversaries will have a thing or two to say  
17 about it.

18 There are about 10 differentiations  
19 that we've pre-marked and are in our binders, and  
20 I'd like to move them into evidence. Each one is  
21 a declaration signed under penalty of perjury,  
22 and they are the following documents numbers, if

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1 I may list that for everyone. I'll do it slowly  
2 and concisely. 51, 72, 74, 75, 76, 77, 83, 87,  
3 and 88.

4 MR. MACLEAN: I'm sorry. Are these  
5 documents being offered into evidence now or  
6 you're just letting us know?

7 MR. BOYDSTON: Yes, they are being  
8 offered.

9 MR. MACLEAN: Okay. So I have some  
10 objections to some. Is now the time?

11 JUDGE BARRETT: Well, let's talk about  
12 them.

13 MR. MACLEAN: Okay. I believe I've  
14 got all the numbers written down, so I'll just go  
15 through them. IPG 51 is a declaration of Warren  
16 Judd related to Adventis Media Center Production.  
17 I object to this declaration on the grounds of  
18 hearsay and no sponsoring witness. But also,  
19 with respect to this one in particular, I object  
20 on the grounds of, in a regular court the word  
21 would be judicial estoppel. I'm not sure what  
22 the Board equivalent to that would be. But Mr.

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1 Judd signed an affidavit that was already in  
2 evidence, SDC Exhibit -- could I have your  
3 exhibit list?

4 MR. BOYDSTON: I do stipulate it's in  
5 evidence.

6 MR. MACLEAN: SDC 612. That conflicts  
7 with this declaration. And 612 was submitted  
8 with the Board, filed with the Board by It Is  
9 Written, Inc. If It Is Written, Inc., is going  
10 to file declarations with the Board, then IPG  
11 should not be allowed to present this conflicting  
12 declaration without having the witness present to  
13 explain why there's this conflict between his  
14 declaration here and the one he previously  
15 submitted.

16 So they should have the witness here  
17 if they want to make some explanation. But the  
18 declaration on its face makes no explanation, so  
19 I object to the admission of IPG 51.

20 JUDGE STRICKLER: Before you respond,  
21 the exhibit you're referring to, the SDC Exhibit  
22 612, did the witness appear here in support of

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1 that? .  
2 MR. MACLEAN: Your Honor, with respect  
3 to 612 is an amendment that It Is Written,  
4 Inc., filed with this Board.

5 MR. BOYDSTON: It was filed, though.  
6 There was no personal appearance.

7 MR. MACLEAN: Along with an affidavit  
8 by Mr. Judd. And then IPG got this declaration  
9 that facially conflicts with his affidavit and no  
10 explanation for that conflict. This is a case,  
11 your Honor, and I understand that the judges are  
12 admitting declarations when there's good cause  
13 for the witness not to be here to testify. In  
14 this case, this is an IPG witness for an IPG  
15 claim. They haven't brought him here to explain  
16 this discrepancy. You shouldn't be allowed to  
17 take conflicting positions in two serially-  
18 submitted affidavits.

19 And so I'm offering that as,  
20 basically, a rebuttal to the notion that, in this  
21 particular instance, there is good cause to allow  
22 this document to come in without a sponsoring

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1 witness.

2 MR. BOYDSTON: Your Honor?

3 JUDGE BARRETT: Yes, Mr. Boydston?

4 MR. BOYDSTON: Thank you. First of  
5 all, the proffered declaration does address,  
6 contrary to what Mr. MacLean just said, in the  
7 last paragraph, paragraph eight, it does address  
8 the prior affidavit and he does give an  
9 explanation and acknowledges that he is now  
10 correcting that.

11 As to a proffering witness, Mr. Galaz  
12 is a proffering witness. As to good cause, it's  
13 about as good as it gets for this proceeding.  
14 Unfortunately, Mr. Judd is dying, we are told  
15 literally on his deathbed now from cancer. We  
16 inquired about him attending, and that was the  
17 answer they gave. And that is the good cause for  
18 him not being able to be here in person.

19 So I think that, particularly with the  
20 fact that this, in paragraph eight this affidavit  
21 does address the prior affidavit and, very  
22 importantly, this affidavit is later in time by

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1 about eight years. And so I would submit that  
2 the judges can compare the two and draw their own  
3 conclusion as to what weight they give it.

4 JUDGE BARRETT: The objection is  
5 overruled. 51 is admitted.

6 (Whereupon, IPG Exhibit No. 51 was  
7 received into evidence.)

8 MR. BOYDSTON: Thank you, your Honor.  
9 I defer to Mr. MacLean. I think he probably has  
10 --

11 JUDGE BARRETT: Yes, 72 I think is the  
12 next one, Mr. MacLean.

13 MR. MACLEAN: No objection to 72, your  
14 Honor.

15 JUDGE BARRETT: 72 is admitted.  
16 (Whereupon, IPG Exhibit No. 72 was  
17 received into evidence.)

18 JUDGE BARRETT: 74, Mr. MacLean?

19 MR. MACLEAN: Your Honor, I object to  
20 the admission of IPG 74.

21 JUDGE BARRETT: And what is the basis  
22 of the objection, Mr. MacLean?

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1 MR. MACLEAN: Hearsay, your Honor.

2 And on this one, I'd like to address for a moment  
3 why, with respect to this one, there is not good  
4 cause to allow this declarant to appear by  
5 declaration. And on that basis, your Honor, or  
6 to that extent, I'd offer SDC 615, as it were,  
7 rebuttal to the foundation of IPG 74.

8 JUDGE STRICKLER: What was your SDC  
9 number?

10 MR. MACLEAN: 615.

11 MS. FLOVNIK: Your Honor, we've just  
12 discovered we don't have a copy of 74 in our  
13 binders. We go from 73 to 75, so we can't find  
14 it.

15 MR. BOYDSTON: My apologies. I can  
16 give you my copy. Oh, wait, there's a copy right  
17 here. You can keep it.

18 Your Honor, 615 is Mr. MacLean's  
19 declaration with the attached transcript of the  
20 Jan Harbour perpetuation of testimony. I  
21 certainly have no objection and had no objection  
22 to 615. It is the testimony that was elicited at

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1 that time. In both that testimony and this  
2 declaration, Ms. Harbour clears up any questions  
3 there could possibly be regarding Kenneth  
4 Copeland Ministries, the Kenneth Copeland  
5 Ministries issues. And I submit that the judges  
6 are in perfect position to review those  
7 documents. They're consistent; and, in both  
8 circumstances, Ms. Harbour is stating under oath  
9 that Kenneth Copeland Ministries owns the  
10 material in question and that either Mr. or Mrs.  
11 Copeland personally own it.

12 So we covered the same ground in the  
13 '99 cable proceeding. And I submit that this  
14 evidence is very clear on its face, and there's  
15 really no reason why it shouldn't be admitted.

16 MR. MACLEAN: Your Honor, we did cover  
17 the same ground on the '99 proceeding but on an  
18 incomplete record, which is why this time I'm  
19 offering SDC 615 as part of this record. And if  
20 Mr. Boydston has no objection, I offer 615 into  
21 evidence.

22 MR. BOYDSTON: No, absolutely none.

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1 MR. MACLEAN: Okay. And, your Honor,  
2 with --

3 JUDGE BARRETT: 615 is already  
4 admitted.

5 MR. MACLEAN: With respect to Ms.  
6 Harbour's testimony, both in her declaration and  
7 in the deposition transcript attached to SDC 615,  
8 she does not address, she does not clear up and  
9 certainly does not even address the most  
10 important question, which is what do Kenneth  
11 Copeland and Gloria Copeland's employment  
12 agreements provide with respect to the ownership  
13 of the copyright? Ms. Harbour appeared  
14 voluntarily, as established in SDC 615, for a  
15 deposition. She refused to answer questions on  
16 that issue. She refused to -- they have not  
17 produced the employment agreement from this case,  
18 they have not offered the employment agreements  
19 in this case. The critical question with respect  
20 to the ownership of Kenneth Copeland Ministries  
21 programming is not answered. Now, I'd like to  
22 make -- and that's on IPG. We don't have the

75

1 power to subpoena a witness. It's up to IPG to  
2 answer the very critical problems that we've  
3 raised in the Senate Minority Committee report.

4 MR. BOYDSTON: Your Honor, this is --

5 JUDGE STRICKLER: Let me finish --

6 MR. BOYDSTON: I'm sorry, your Honor.  
7 Sorry.

8 MR. MACLEAN: We've taken a position  
9 in this case that IPG should not be entitled to a  
10 presumption of validity with respect to its  
11 claims. And bearing in mind, IPG has in the past  
12 made claims on behalf of, and including in this  
13 case in 1999, made claims on behalf of an entity  
14 that did not own the copyright to the program it  
15 was claiming.

16 Now we have a very substantial reason,  
17 a very substantial purpose, a reason to question  
18 Kenneth Copeland Ministries' claims of copyright  
19 ownership of the programs it claims in this  
20 proceeding, and IPG has chosen and Kenneth  
21 Copeland Ministries has chosen not to answer  
22 those questions. They should not be allowed to

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1 introduce this declaration, IPG 74, particularly  
2 without addressing the most salient question,  
3 which is what do the employment agreements  
4 provide? This is an issue in this case, and this  
5 is an issue that they have chosen to evade and  
6 not to answer.

7 And I say evade advisably because  
8 that is what they did. In the voluntary  
9 deposition of Jan Harbour conducted in the 1999  
10 proceedings, as set forth in SDC 615, it was the  
11 most evasive deposition I have ever conducted in  
12 my career. It should not be allowed, and they  
13 should not be permitted to do this.

14 JUDGE BARRETT: My goodness, Mr.  
15 MacLean, you've had a calm career.

16 MR. BOYDSTON: Your Honor, and I  
17 apologize --

18 JUDGE BARRETT: No, we're going to  
19 reserve on this one, so let's go ahead to the  
20 next one. That would be 75.

21 MR. BOYDSTON: 75, yes. Can I just --  
22 he spoke for a while. That's argument. I think

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1 he's entitled to make argument. That's not a  
 2 reason to not admit it. That's my response.  
 3 JUDGE BARRETT: Thank you.  
 4 MR. BOYDSTON: That was 74, correct?  
 5 JUDGE BARRETT: Yes. Now we're  
 6 talking about 75.  
 7 MR. MACLEAN: Okay. Sorry, your  
 8 Honor. I think we're now on IPG 75?  
 9 JUDGE BARRETT: Correct.  
 10 MR. MACLEAN: Your Honor, well, this  
 11 is a very, very lengthy exhibit here. I object  
 12 to both the foundation of this exhibit, there's  
 13 no offering witness, and with respect to the form  
 14 in which it's being offered, which is just a mass  
 15 collection of various kinds of correspondence.  
 16 JUDGE BARRETT: Excuse me, Mr.  
 17 Maclean. My Exhibit 75 is a three-page letter.  
 18 MS. PLOVNICK: Mine is also.  
 19 MR. BOYDSTON: Mine is also.  
 20 MR. MACLEAN: Mine has about maybe --  
 21 JUDGE BARRETT: It's a Worldchanger  
 22 letter signed by --

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1 MR. BOYDSTON: Look and see what you  
 2 have. I don't know why this is here. It should  
 3 just be this three-page letter. You know, I  
 4 guess, to aid the SDC, I'd be willing to, in a  
 5 break, try and figure out what this is, if it  
 6 belongs somewhere else, so that your records are  
 7 complete, or if it's just surplusage. But all  
 8 that's being offered is the three-page letter.  
 9 MR. MACLEAN: All right.  
 10 JUDGE BARRETT: Maybe that's the  
 11 missing Exhibit 122.  
 12 MR. BOYDSTON: I'd have to go back and  
 13 look, but, if so, then they've got two of them.  
 14 MR. MACLEAN: I object to SDC 75 as  
 15 hearsay, your Honor.  
 16 JUDGE BARRETT: I think you meant IPG  
 17 75.  
 18 MR. MACLEAN: I'm sorry. IPG 75.  
 19 JUDGE BARRETT: IPG 75 is admitted.  
 20 (Whereupon, IPG Exhibit No. 75 was  
 21 received into evidence.)  
 22 MR. BOYDSTON: Thank you, your Honor.

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1 JUDGE BARRETT: Next one is 76.  
 2 MR. MACLEAN: No objection to 76, your  
 3 Honor.  
 4 JUDGE BARRETT: 76 is admitted.  
 5 (Whereupon, IPG Exhibit No. 76 was  
 6 received into evidence.)  
 7 JUDGE BARRETT: 77?  
 8 MR. MACLEAN: No objection to 77, your  
 9 Honor.  
 10 JUDGE BARRETT: 77 is admitted.  
 11 (Whereupon, IPG Exhibit No. 77 was  
 12 received into evidence.)  
 13 JUDGE BARRETT: 83?  
 14 MR. MACLEAN: Your Honor, I object to  
 15 83. This appears to be a declaration of Willie  
 16 Wilson containing opinion testimony with regard  
 17 to the correct, to the categorization of Willie  
 18 Wilson's program "Singsation." With respect to  
 19 both the declaration from Envoy and this  
 20 declaration from IWV Media, the judges have ruled  
 21 that opinion testimony is not admissible. And  
 22 this is actual even more clearly opinion

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1 testimony in this declaration than with respect  
 2 to the others.  
 3 IPG was ordered in this case to  
 4 produce exemplar of Willie Wilson's broadcast  
 5 program "Singsation." They failed to do that.  
 6 The only testimony in the record so far relating  
 7 to the exhibit that they did produce is that it  
 8 was not an exemplar of a broadcast program, and I  
 9 note that the declaration doesn't even mention  
 10 the exemplar or seek to lay any further  
 11 foundation for it at all.  
 12 So I object both on the basis of  
 13 improper opinion testimony and on the basis of  
 14 improper foundation and on the basis of failure  
 15 to comply with the Board's discovery order with  
 16 respect to the production of exemplars of this  
 17 program "Singsation."  
 18 MR. BOYDSTON: We did produce an  
 19 exemplar. Mr. Rovin said he didn't think it was  
 20 representative. That's his opinion. We think  
 21 he's just wrong. You can decide for yourself  
 22 because this is going to be provided to you and

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1 offered in evidence. That is the issue with  
2 regard to the exemplar.

3 As for Mr. Wilson, Mr. Wilson here is  
4 just simply stating facts about the nature of his  
5 programming. He's saying I sing gospel music,  
6 the themes are this, the themes are that. That's  
7 giving you factual information.

8 If there is an opinion in here, I  
9 don't see it, but perhaps Mr. MacLean can point  
10 it out. I'd also just point out, too, that under  
11 the law and under the rules of evidence, opinions  
12 are not inadmissible. An expert opinion by a  
13 layperson is inadmissible. We're not offering  
14 Mr. Williams as an expert. We are offering him  
15 as a percipient witness who can describe facts  
16 about his own television program, and that's what  
17 he does.

18 MR. MACLEAN: Your Honor, he doesn't  
19 even limit his own television program. He's  
20 comparing it to other television programs,  
21 including programs claimed by the SDC. It's all  
22 opinion. This is essentially --

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1 JUDGE BARRETT: Okay. Your objection  
2 to lay opinion is granted, and we will clarify as  
3 we enter the order which portions of the  
4 declaration we are not considering and which we  
5 are. So it is admitted. Exhibit 83 is admitted,  
6 subject to redaction of opinion, lay opinion.

7 (Whereupon, IPG Exhibit No. 83 was  
8 received into evidence.)

9 MR. BOYDSTON: Thank you, your Honor.

10 JUDGE BARRETT: And 87?

11 MR. MACLEAN: No objection to 87, your  
12 Honor.

13 JUDGE BARRETT: 87 is admitted.  
14 (Whereupon, IPG Exhibit No. 87 was  
15 received into evidence.)

16 JUDGE BARRETT: And 88?

17 MR. MACLEAN: No objection to 88, your  
18 Honor.

19 JUDGE BARRETT: 88 is admitted.  
20 (Whereupon, IPG Exhibit No. 88 was  
21 received into evidence.)

22 MR. BOYDSTON: Thank you, your Honor.

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1 JUDGE BARRETT: Mr. Boydston?

2 MR. BOYDSTON: Thank you, your Honor.

3 Only because, out of deference to the panel, it  
4 is 10:30 in case you would like to have time for  
5 a break. But I'm ready to go right now.

6 JUDGE BARRETT: Let's go. I don't  
7 think this will be very lengthy.

8 MR. BOYDSTON: My hope, too.

9 WHEREUPON,

10 RAUL GALAZ

11 was called as a witness by Counsel for the  
12 Worldwide Subsidy Group and, having been first  
13 duly sworn, assumed the witness stand, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BOYDSTON:

17 Q Now, Mr. Galaz, please take a look at  
18 what has been marked and admitted, by my notes,  
19 as Exhibit 62.

20 A All right.

21 Q Now, I believe we covered this or we  
22 discussed this with regard to challenges by the

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1 MPAA, and I'm simply, there's been the same  
2 challenge, essentially, by the SDC. So for the  
3 record, I just want to make sure that we address  
4 that.

5 JUDGE BARRETT: On second thought,  
6 let's take our morning recess. Fifteen minutes.

7 (Whereupon, the above-referred to  
8 matter went off the record at 10:32  
9 and went back on the record at  
10 10:52 a.m.)

11 JUDGE BARRETT: Please be seated. We  
12 did inquire about the temperature in the room.

13 Apparently, there's a whole sector of the  
14 building that has no heat, so feel free to throw  
15 on shawls or overcoats or whatever is necessary.

16 MR. BOYDSTON: Your Honor, before I  
17 resume with Mr. Galaz, you may recall last week  
18 Judge Strickler had a question about whether or  
19 not we could identify programs for which IPG made  
20 a challenge in its written rebuttal statement  
21 and, of those, which programs the MPAA was  
22 responding to or wasn't, and we endeavored to do

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1 that. And I'm not offering this as evidence.  
2 I'm offering it just as an aid in response to  
3 your inquiry. So I have it here to distribute if  
4 you would like it.

5 JUDGE STRICKLER: I like the idea. I  
6 have a problem with it not necessarily being  
7 evidence and being shown to the MPAA. That's the  
8 document that identifies what they're not  
9 objecting to without them having an opportunity  
10 to see it and examine the witness, that's  
11 troublesome I think.

12 MR. BOYDSTON: I understand. We were  
13 just trying to comply with your request. And as  
14 we did it, that occurred to us. So, I mean, one  
15 thing I can do is I can provide it to counsel and  
16 then maybe they can get back to us and say what  
17 they think of it, and we could submit it at some  
18 point at a later date.

19 MR. OLANIRAN: Your Honor, I believe  
20 the question was actually directed at us, and we  
21 were going to provide it. I think I have some  
22 qualifications about how we're going to respond

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1 of fact and citing to the documents and the  
2 transcripts, as necessary, and we'll figure it  
3 out.

4 MR. BOYDSTON: Very good. I was just  
5 bringing it up now because there had been talk  
6 about it. So we tried to do something along  
7 those lines.

8 JUDGE BARRETT: Be frightfully aware  
9 that there should be no proposed finding of fact  
10 for which there is nothing in the record. And if  
11 it would facilitate MPAA coming up with their  
12 findings, perhaps you should tell them.  
13 Communication, you know --

14 MR. BOYDSTON: I have plenty of copies  
15 of this, so I will give it to them and they can  
16 do whatever they wish with it.

17 JUDGE BARRETT: Thank you.

18 MR. MACLEAN: Your Honor?

19 JUDGE BARRETT: Mr. MacLean?

20 MR. MACLEAN: I wanted to offer, with  
21 respect to IPG Exhibit 83, which is the  
22 declaration of Willie Wilson, you ruled that you

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1 to that. Whatever is in the record is in the  
2 record. We will, at some point, identify the  
3 titles that we're not addressing with evidence,  
4 but we do address all of the titles one way or  
5 another.

6 JUDGE STRICKLER: I may be wrong, but  
7 I thought we were going back and forth and  
8 discussing this. One of the alternatives, and  
9 maybe it was my alternative, was that perhaps it  
10 would be addressed in the proposed findings of  
11 fact.

12 MR. OLANIRAN: I think you did mention  
13 something to that effect, your Honor.

14 MR. BOYDSTON: Okay. I may have  
15 misunderstood.

16 JUDGE STRICKLER: It was a back and  
17 forth that was rather casual, so it's not a  
18 matter of misunderstanding so much as just trying  
19 to figure out the best way to do it. And maybe  
20 the best way to do it is for you to hang on to  
21 those documents and use them as aids for yourself  
22 for purposes of instructing the proposed findings

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1 would accept it but subject to redaction. And  
2 over the break, we went through and found the  
3 five redactions that we would request, and I  
4 thought, to assist the judges and also to make  
5 our record, if we could offer those suggested  
6 redactions.

7 JUDGE BARRETT: Sounds like a plan.  
8 Okay. Mr. MacLean, you may request redaction at  
9 this time.

10 MR. MACLEAN: Yes, your Honor. First  
11 redaction, paragraph three, we request redaction  
12 of the entirety of that paragraph starting from  
13 the words "while I understand." So starting from  
14 the second sentence of that paragraph, the  
15 remainder of the paragraph.

16 JUDGE STRICKLER: And the basis for  
17 the requested redaction?

18 MR. MACLEAN: Your Honor, the basis  
19 for all of these redactions are that these  
20 reflect opinion testimony, inadmissible lay  
21 opinion testimony, and also that they describe  
22 opinion relating to the content of a program, an

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1 exemplar of which has not been offered or  
2 admitted into evidence.

3 JUDGE STRICKLER: I have a question  
4 for you. When you say it's inadmissible lay  
5 testimony, are you saying it's inadmissible  
6 because it's lay testimony or it's the type of  
7 lay testimony that should not be admitted?

8 MR. MACLEAN: It's the type of lay  
9 opinion that should not be admitted --

10 JUDGE STRICKLER: Opinion.

11 MR. MACLEAN: -- your Honor.

12 JUDGE STRICKLER: Not that it's lay  
13 opinion, it's improper lay opinion?

14 MR. MACLEAN: Improper lay opinion.

15 JUDGE BARRETT: Okay. We will take  
16 your requested redactions under advisement, but  
17 we do want to go ahead and get them on the  
18 record, okay? So we're not going to rule right  
19 now.

20 MR. MACLEAN: Thank you, your Honor.

21 MR. BOYDSTON: Your Honor, should I  
22 make comment or is this my opportunity to make

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1 Wilson does with the profits that his company  
2 makes.

3 And then paragraph seven, back to lay  
4 opinion and failure to produce an exemplar or lay  
5 a foundation for an exemplar, we object to the  
6 first sentence of paragraph seven starting with  
7 "music appearing in Singsation" and ending with  
8 "just a music program." And that concludes our  
9 request for redaction.

10 JUDGE BARRETT: Okay, thank you. Do  
11 you want to respond, Mr. Boydston?

12 MR. BOYDSTON: Yes, your Honor,  
13 briefly. With regard to paragraph three, again,  
14 I think this is, we are not offering as an  
15 expert. We're offering him simply as a lay  
16 percipient witness. And I think, on those  
17 grounds, what is in paragraph three here is  
18 permissible. He's saying what he understand and  
19 what he believes. That doesn't carry with it the  
20 weight of an expert. It carries the weight of a  
21 percipient. And as a percipient, he is in the  
22 best condition to describe certain facts about

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1 comment, or how do you want to handle that?

2 JUDGE BARRETT: Let's let him get  
3 through the whole thing, and then you may  
4 comment.

5 MR. BOYDSTON: Okay.

6 MR. MACLEAN: Your Honor, in paragraph  
7 four, we request redaction of the second  
8 sentence, second and third sentences of paragraph  
9 four starting with "scripture is often cited" and  
10 ending in "which is predominantly devotional in  
11 nature."

12 JUDGE BARRETT: Okay.

13 MR. MACLEAN: Same basis as with  
14 respect to the last one. With respect to  
15 paragraph six, we object, we request redaction of  
16 the first clause, "no different than other  
17 religious programming" to the end of that clause,  
18 and we also request redaction in paragraph six,  
19 the last sentence of paragraph six. On this  
20 redaction, our request is actually not on the  
21 basis of opinion. This one, we object to this  
22 sentence on the basis of relevance as to what Mr.

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1 his programming. And when he says it's a program  
2 that is primarily intended to inspire the tenets  
3 of Christianity, I think that is a statement of  
4 his own intent and his own belief.

5 That doesn't mean it carries the  
6 weight of an expert. It means it carries the  
7 weight of the individual who is actually  
8 speaking, singing, and performing. Now, you can  
9 take that with a grain of salt, but it is he who  
10 is developing the program and he who is actually  
11 singing, and certainly he who is speaking can say  
12 what they think they're speaking about. And  
13 that's not an expert opinion. That's percipient,  
14 I would submit.

15 Now, where he says, "I consider such  
16 presentation no different than any other program  
17 intended to inspire the tenets of religious  
18 faith," there again, that is his own personal lay  
19 opinion, and we're offering it for nothing  
20 further. And if you take that into  
21 consideration, obviously any such consideration  
22 you took would not be as dramatic as if it were

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1 from an expert. It's not being offered from an  
2 expert.

3 With regard to paragraph four, he  
4 says, "Scripture is often cited in Singsation and  
5 personal religious testimonials appear within the  
6 program." That is purely factual statement.  
7 Then he says, "To relegate Singsation to being  
8 just music, like Soul Train and American  
9 Bandstand, misunderstands the purpose and  
10 content." Again, there he is offering his view  
11 on the comparison with those programs, but it is  
12 not expert testimony and not offered for that  
13 purpose. You can take it with a grain of salt,  
14 but that's what the man who actually makes this  
15 stuff says.

16 With regard to paragraph six, no  
17 different than other religious programming, I  
18 mean, it's just an opening phrase anyway. It's  
19 not that significant. The last two sentences,  
20 though, he's saying I understand that certain  
21 parties have attempted to distinguish us, you  
22 know, in this particular way, and he says we are,

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1 you know, refers to the profit. Again, this is  
2 fact. If you consider that to be an irrelevant  
3 fact, terrific. That's up for you to decide.  
4 It's not a question of admissibility. There's a  
5 question about relevance. Clearly, Mr. Wilson  
6 think it's relevant as to whether or not he's  
7 taking profit from something that he thinks he's  
8 doing, which is religious. You can take it or  
9 leave it.

10 Number seven. With regard to this  
11 exemplar, there is an exemplar. I've got it here  
12 to admit and then provide it to counsel and other  
13 parties. You can decide what you think is on  
14 here. It is a number of different programs, some  
15 of which, I think all of which were, in fact,  
16 broadcast. Mr. Rovin testified that he didn't  
17 think this was representative. That's Mr.  
18 Rovin's testimony. Okay. But I think if you  
19 look at this, you'll see that it is a fair  
20 exemplar of Mr. Williams --

21 JUDGE STRICKLER: Question: is this  
22 the proposed exemplar that there's a dispute as

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1 to whether it's a videotape that was not aired on  
2 television but rather was distributed in some  
3 other commercial form?

4 MR. MACLEAN: Yes, your Honor. This  
5 DVD, and I know that it's not offered into  
6 evidence, and we are going to object if that  
7 comes up. But this DVD, and, actually, you'll  
8 see in the portion of Mr. Wilson's, I think Dr.  
9 Wilson's testimony that we have not objected to,  
10 or at least not on the basis that I just  
11 described with respect to our redactions,  
12 "Singsation" is basically, basically promotes the  
13 sale of these videos. So that's a video that  
14 Willie Wilson Productions sells as a video. If  
15 you want to buy the video, you can buy the video.  
16 And then at the beginning of a video, there's an  
17 introduction saying this is the DVD that we're  
18 producing, you know, it's our first DVD  
19 production. It says something to that effect.  
20 It's not, even on its face or even purported to  
21 be, a broadcast, an exemplar of a broadcast  
22 program.

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1 . And in response to something that Mr.  
2 Boydston said, if it is true that Dr. Wilson is  
3 in the best position to describe the content of  
4 his programming, it's true only because they  
5 defied the judge's discovery order requiring them  
6 to produce an exemplar so we could be familiar  
7 with the contents of Dr. Wilson's, of Willie  
8 Wilson Productions broadcast program.

9 JUDGE STRICKLER: Refresh my memory.  
10 Did Mr. Rovin testify as to that point?

11 MR. MACLEAN: Mr. Rovin testified that  
12 he did review the DVD. He didn't say it wasn't  
13 representative. He said it was, on its face, not  
14 a broadcast program. It was a DVD produced and  
15 marketed as a DVD. So it's not an exemplar of  
16 the broadcast programming of Dr. Wilson's  
17 company.

18 And I'll point out that Dr. Wilson  
19 himself, if they could lay a foundation for that  
20 DVD, the place to do it would be in his  
21 declaration. The place to do it would be for him  
22 to say this is an exemplar of our broadcast



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1 programming. He's not doing that. They've got  
2 no foundation --

3 JUDGE STRICKLER: If the question is  
4 whether it's, on its face, a television program  
5 or a commercial DVD, arguably, if we watch that  
6 portion, we'd be able to determine that our for  
7 ourselves, right?

8 MR. MACLEAN: Well, I agree with that.  
9 I'm not sure that that answers the question from  
10 an evidentiary basis. But, I mean, I agree with  
11 that. If you were to watch the program, you'd  
12 see the same thing that Mr. Rovin saw and that  
13 it's, on its face, not a broadcast exemplar.

14 MS. PLOVNICK: Your Honor, I just  
15 wanted to say for the record our only objection  
16 would be that the copy that we got of the  
17 purported exemplar was not in the kind of  
18 packaging and everything there. It was just a  
19 copy with the title on top of it, and so I've  
20 never seen the packaging or any of that, so I  
21 don't know if it is, in fact, what was produced  
22 to us. He's representing that, so that may be.

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1 But what I got was not in the kind of bubble wrap  
2 thing.

3 However, it would be consistent with  
4 what Mr. Rovin said, that it was a commercial DVD  
5 and that it's a bubble-wrapped commercial DVD.

6 MR. MACLEAN: One last point. If you  
7 look at the first sentence of paragraph three in  
8 IPG 83, which we haven't requested redaction for,  
9 "Singsation" is a half-hour program that's aired  
10 on Sunday mornings for 25 years. That DVD is not  
11 a half-hour program. It's I think hour long,  
12 two-hour long. Anyway, longer than a half an  
13 hour commercially-produced DVD for purposes of  
14 sale as a DVD.

15 MR. BOYDSTON: We didn't define  
16 anything. We asked Mr. Wilson for an exemplar.  
17 He said, "All I can give you is a DVD we sell.  
18 The content of the DVD we sell are different  
19 programs that we broadcast or different episodes  
20 or segments from our broadcast." That's what  
21 this is, and if you watch it it's evidently clear  
22 that's exactly what it is.

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1 MS. PLOVNICK: Your Honor, I would  
2 object that he's testifying. That's not in Mr.  
3 Wilson's affidavit, and he's not here to make  
4 that testimony.

5 MR. BOYDSTON: I was addressing Mr.  
6 MacLean's comments that we defied the order --

7 JUDGE BARRETT: Sustained.

8 MR. BOYDSTON: -- for an exemplar.  
9 That was my point.

10 JUDGE BARRETT: Okay. Go ahead. You  
11 were about to ask Mr. Galaz, I think, about an  
12 exhibit.

13 MR. BOYDSTON: I was. Exhibit 62.

14 BY MR. BOYDSTON:

15 Q Now, we've looked at Exhibit 62  
16 before, and we can go through this fairly  
17 quickly. But first let's provide everyone what  
18 Exhibit 62 is.

19 A Exhibit 62 is IPG's 2008 cable and  
20 2008 satellite claim that were sent in under a  
21 common cover letter, and the Express Mail receipt  
22 is right here attached to it, as well.

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1 Q And I think you testified, well, do  
2 you recall the MPAA made an argument that certain  
3 claims for 2008 cable and satellite simply had  
4 never been made; do you recall that?

5 A That's correct.

6 Q And the SDC has leveled the same  
7 attack. Are you familiar with that?

8 A Yes, I am.

9 Q And, again, you testified about it  
10 before. What did you figure out as to the, you  
11 know, the document upon which they were relying?

12 A Well, the document upon which  
13 apparently appears in the record of the CRB is an  
14 incomplete exhibit for 2008 satellite but not for  
15 2008 cable. It's literally the exact same  
16 exhibit. The heading is the same, and it  
17 indicates that it's an exhibit for both cable and  
18 satellite. The official version of the 2008  
19 cable claim is the entirety of ten pages. The  
20 exhibit for 2008 satellite was missing pages, I  
21 think, four and five, nine and ten, if I recall  
22 correctly. And that's pretty much . . .

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1 Q Okay. And, again, Exhibit 62 is  
2 consistent with -- strike that. I think we  
3 covered it. Please take a look at Exhibit 64.  
4 A Okay.  
5 Q And tell us what Exhibit 64 is.  
6 A Exhibit 64 are the agreements that  
7 were produced to the SDC that relate to any IPG-  
8 represented claimant who had a program that could  
9 be in the devotional category.  
10 Q And are you familiar with the records  
11 that constitute Exhibit 64?  
12 A Yes, and you can see from the Bates  
13 stamp that they were produced by IPG in this  
14 proceeding.  
15 Q Yes. And where did you come across  
16 these documents?  
17 A From the business records of WSG.  
18 MR. BOYDSTON: Your Honor, I'd like to  
19 move that Exhibit 64 be admitted.  
20 MR. MACLEAN: No objection, your  
21 Honor.  
22 MS. PLOVNIK: No objection.

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1 JUDGE BARRETT: 64 is admitted.  
2 (Whereupon, IPG Exhibit No. 64 was  
3 received into evidence.)  
4 MR. BOYDSTON: Thank you, your Honor.  
5 BY MR. BOYDSTON:  
6 Q Please take a look at what's been  
7 marked Exhibit 65, and tell me if you're familiar  
8 with that.  
9 A Yes.  
10 Q And what is that document? What are  
11 those documents?  
12 A These are all documents that were  
13 submitted by IPG-represented claimants, a variety  
14 of acknowledgements of representation. The only  
15 exception I think is the very first one. I don't  
16 think we requested Adventis to sign an  
17 acknowledgment of representation because the  
18 substance of that appeared in Mr. Judd's  
19 declaration anyway, so it was just unnecessary.  
20 Q And where did you come across these  
21 documents?  
22 A WSG business records.

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1 Q And were they produced in discovery to  
2 your knowledge?  
3 A Yes.  
4 MR. BOYDSTON: Your Honor, I'd like to  
5 move that Exhibit 65 be admitted.  
6 MR. MACLEAN: Your Honor, I object to  
7 the admission of Mr. Judd's declaration on the  
8 same grounds as I previously objected to it in a  
9 different exhibit. With respect to the remainder  
10 of Exhibit IPG 65, no objection.  
11 JUDGE BARRETT: Exhibit 65 is admitted  
12 in as much as -- oh, didn't we reserve on this  
13 one?  
14 MR. BOYDSTON: No, your Honor, you  
15 admitted it, but this is duplicative of it.  
16 JUDGE BARRETT: Yes, we did. And so  
17 65 is admitted.  
18 (Whereupon, IPG Exhibit No. 65 was  
19 received into evidence.)  
20 MR. BOYDSTON: Thank you, your Honor.  
21 BY MR. BOYDSTON:  
22 Q Please take a look at what's marked as

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1 Exhibit 66 and tell me if you're familiar with  
2 that.  
3 A Yes, I am.  
4 Q And what is it?  
5 A These are documents that were produced  
6 in discovery to the SDC in these proceedings and  
7 several of them in the 2000 and 2003 proceedings.  
8 It constitutes correspondence from the IPG-  
9 represented claimant where they indicate which  
10 programs they want us to make claim on their  
11 behalf.  
12 Q And where did you get these documents?  
13 A From the WSG business records.  
14 MR. BOYDSTON: Your Honor, I'd like to  
15 move to admit Exhibit 66.  
16 MR. MACLEAN: Your Honor, I have three  
17 -- this is a lengthy exhibit, and I object to the  
18 manner in which it's being provided to the panel.  
19 But in addition to that, I have three specific  
20 objections that I'd like to raise.  
21 JUDGE BARRETT: Before you raise any  
22 specific objections, Mr. MacLean, we note that

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1 this exhibit is marked as restricted.  
 2 MR. MACLEAN: Thank you, your Honor.  
 3 I would request that we go into closed session.  
 4 JUDGE BARRETT: They're going right  
 5 ahead. They know what's coming. Thank you,  
 6 gentlemen. Mr. MacLean?  
 7 MR. MACLEAN: Your Honor, these all  
 8 fall into the category of objection to improper  
 9 lay opinion testimony. And so, first, I would  
 10 object to the email at the top of IPG 1146.  
 11 We're on IPG Exhibit 66, Exhibit 66, but Bates  
 12 number IPG 1146. I think they're all in Bates  
 13 order.  
 14 MR. BOYDSTON: Your Honor, again,  
 15 we're not offering this as expert testimony.  
 16 This is simply what the woman wrote. This is  
 17 simply what the person wrote in their email. I  
 18 think that the SDC is going a bit overboard on  
 19 this issue about opinion. Again, lay opinion is  
 20 not inadmissible. It's inadmissible if it's  
 21 offered for its expertise, and that's not what  
 22 we're doing.

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1 MR. MACLEAN: Your Honor, I just  
 2 object to the first sentence at the top of this  
 3 email at 1146 where she says "most or all of our  
 4 programs are based on Christianity and would be  
 5 considered religious/devotional." That's  
 6 precisely the opinion that was already offered  
 7 through a declaration of Envoy Productions and  
 8 that the judges excluded from that declaration.  
 9 JUDGE BARRETT: Noted. And your other  
 10 objection?  
 11 MR. MACLEAN: IPG 1153, the email on  
 12 the lower portion of that page, "As you also  
 13 brought to my attention, the primary focus is  
 14 devotional in nature, a fact that I've confirmed  
 15 with the information appearing on episode  
 16 synopses for the broadcasts." In IWV Media's  
 17 declaration that was offered into evidence, the  
 18 judges excluded this precise opinion, and I would  
 19 ask that, consistent with that ruling, that this  
 20 opinion be excluded from this email, as well.  
 21 MR. BOYDSTON: Our position is the  
 22 same. It's not offered for expertise. She's

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1 simply stating what she understands of her own  
 2 knowledge.  
 3 JUDGE BARRETT: I'm sorry. We're  
 4 looking at the bottom half of the page or the  
 5 bottom half to the text; is that correct?  
 6 MR. MACLEAN: Yes, your Honor. There  
 7 are two emails on IPG 1153. There's an email at  
 8 the top and an email below it.  
 9 JUDGE BARRETT: Right. And doesn't  
 10 that say Maureen, comma, blah, blah, blah, blah,  
 11 Raul, so that would be Mr. Galaz's opinion?  
 12 MR. MACLEAN: Thank you. All the more  
 13 reason to object to that statement.  
 14 MR. BOYDSTON: I'm not offering it for  
 15 his opinion either. I mean, this was just the  
 16 correspondence. And if I was offering it for  
 17 expert opinion, it would absolutely be  
 18 inadmissible for that purpose. I'm not. We're  
 19 simply providing -- all we're doing here, the  
 20 only reason this is being provided is to show  
 21 there was correspondence between the parties.  
 22 JUDGE BARRETT: Okay, thank you. Mr.

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1 Galaz, I'm sorry, no disrespect meant by the  
 2 "blah, blah, blah." Mr. MacLean?  
 3 MR. MACLEAN: And IPG 1207 in the same  
 4 exhibit. This one is a particularly odd one, but  
 5 I'll refer to the -- I object to the third  
 6 sentence of this email where I believe Ms.  
 7 Jackson is saying, "I believe Singsation falls  
 8 under the category of devotional program which  
 9 generates a higher percentage than religious  
 10 programming." So for whatever it's worth, I  
 11 object to the admission of that sentence in which  
 12 Ms. Jackson claims that the programming, claims  
 13 her own opinion of the program being devotional  
 14 and not religious.  
 15 MR. BOYDSTON: My response is the  
 16 same. It's not offered for expert opinion. It's  
 17 merely offered to show that there was  
 18 correspondence between the parties, and I  
 19 wouldn't expect that the panel, if it admitted  
 20 this, would give any expert weight to that  
 21 statement.  
 22 JUDGE BARRETT: Okay, thank you.

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1 Thank you, Mr. MacLean. You may proceed, Mr.  
2 Boydston.

3 MR. BOYDSTON: Your Honor, I just  
4 wasn't clear on the status of Exhibit 66. Is it  
5 being admitted or not admitted or admitted but  
6 not as to those things and we're holding those in  
7 reserve?

8 JUDGE BARRETT: Exactly the latter.  
9 It is admitted but with the caveat that we will  
10 review the specific objections raised by Mr.  
11 MacLean to the language therein.

12 (Whereupon, IPG Exhibit No. 66 was  
13 received into evidence.)

14 MR. BOYDSTON: Thank you.

15 BY MR. BOYDSTON:

16 Q Mr. Galaz, please take a look at  
17 what's been marked as Exhibit 67. Are you  
18 familiar with that, with those documents?

19 A Yes, I am.

20 Q And what were these documents?

21 A They're comparable to the prior --

22 Q And they're also restricted, I would

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1 point out, so . . .

2 JUDGE BARRETT: Thank you.

3 MR. GALAZ: Comparable to the prior  
4 category of documents. It's correspondence from  
5 IPG-represented claimants to IPG. My  
6 recollection is that it was in response to a  
7 follow-up discovery request asking for further  
8 correspondence between these parties and us in  
9 response to -- maybe I need to back up. My  
10 recollection is that there was a follow-up  
11 request for documents that precipitated the other  
12 correspondence whereby IPG-represented claimants  
13 that identified what programs they wanted IPG to  
14 make claim for.

15 BY MR. BOYDSTON:

16 Q Okay. And were these documents  
17 produced in discovery?

18 A Yes, as indicated by the Bates stamp.

19 Q And where did you find these  
20 documents?

21 A In the WSG business records.

22 MR. BOYDSTON: Your Honor, I'd like to

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1 move that Exhibit 67 be admitted.

2 MR. MACLEAN: No objections.

3 MS. PLOVNICK: No objection.

4 JUDGE BARRETT: 67 is admitted.  
5 (Whereupon, IPG Exhibit No. 67 was  
6 received into evidence.)

7 MR. BOYDSTON: Thank you, your Honor.

8 BY MR. BOYDSTON:

9 Q Please take a look at what's been  
10 marked as Exhibit 68, and tell me if you're  
11 familiar with that document.

12 A Yes, I am.

13 Q I believe we've discussed this  
14 document before, and it may have been admitted as  
15 an SDC exhibit, but I'm not certain. And I think  
16 there may be handwritten notes on this one that  
17 were not in the other one. In any event, tell us  
18 what this is, specifically IPG Exhibit 68.

19 A Exhibit 68 is the agreement between  
20 IPG and Maureen Millen's various companies. The  
21 reason I think it was, I think there was an issue  
22 that the third page was errantly, somehow I

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1 presume it was a scanning error, excluded from  
2 the production to the SDC. We had, in fact,  
3 produced this in the 2000 and 2003 proceedings in  
4 its entirety, and there was, in fact, testimony  
5 about all three of the pages from me in the 2000  
6 and 2003 proceedings. But it's the full three  
7 pages.

8 MR. BOYDSTON: Your Honor, I'd like to  
9 move that you admit Exhibit 68.

10 MR. MACLEAN: May I voir dire, your  
11 Honor?

12 JUDGE BARRETT: You may.

13 VOIR DIRE EXAMINATION

14 BY MR. MACLEAN:

15 Q Mr. Galaz, the third page of Exhibit  
16 68 that starts with Exhibit A, is this the page  
17 that you're referring to that was omitted from  
18 the production?

19 A This is from my recollection. I think  
20 that's why we included it here. But I think  
21 that's correct, yes.

22 Q And these handwritten notes at the

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1 bottom of Exhibit A, are these -- whose notes are  
2 these?

3 A Maureen Millen's.

4 Q And is it your testimony that this  
5 Exhibit A was included with this representation  
6 agreement at the same time that this  
7 representation agreement was created in 2012?

8 A Absolutely. And this document, all  
9 three pages were, in fact, produced in the 2000  
10 and 2003 proceedings. I suspect that somehow,  
11 because we ran into this a handful of occasions,  
12 when we were producing documents they were  
13 getting scanned by a company that has a very  
14 large scanner that runs very quickly. We found a  
15 few errors, and there were things that had been  
16 skipped over. So I think that's just one of  
17 them.

18 MR. MACLEAN: No objection, your  
19 Honor.

20 JUDGE BARRETT: Exhibit 68 is  
21 admitted.

22 (Whereupon, IPG Exhibit No. 68 was

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1 received into evidence.)

2 MR. BOYDSTON: Thank you, your Honor.

3 BY MR. BOYDSTON:

4 Q Please take a look at what has been  
5 marked as Exhibit 71.

6 A Okay.

7 Q And are you familiar with this  
8 document?

9 A Yes. It's an excerpt from testimony  
10 in the 2000 and 2003 proceeding, specifically at  
11 the preliminary hearing.

12 MR. BOYDSTON: Your Honor, I'd like to  
13 move to admit Exhibit 71.

14 MR. MACLEAN: Your Honor, since the  
15 entire testimony here isn't included, I guess I'd  
16 like to have a proffer of relevance as to the  
17 portion of the testimony that's been provided  
18 here.

19 JUDGE BARRETT: Mr. Boydston?

20 MR. BOYDSTON: Yes, your Honor. May  
21 I question the witness?

22 JUDGE BARRETT: You may.

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1 BY MR. BOYDSTON:

2 Q Mr. Galaz, are you familiar with the  
3 content of the excerpt of the record that is  
4 Exhibit 71?

5 A It's been a while since I've looked at  
6 this, so hang on one second. I'm fairly certain  
7 I know why it was here. Yes, I know why it is  
8 here.

9 Q And what is the relevance of these  
10 excerpts from that proceeding presently?

11 A In the, I believe, SDC rebuttal  
12 statement -- well, there's two. In the SDC  
13 rebuttal statement and the MPAA rebuttal  
14 statement, there were assertions as to when I was  
15 involved with WSG actively and in what capacity.  
16 And there was, in fact, in the order following  
17 the preliminary hearing, a reference that was  
18 actually inaccurate as to when I was involved.  
19 This excerpt addresses that subject. It also  
20 addresses the subject of my preparation and Ms.  
21 Millen's execution of the document we looked at  
22 immediately prior that she signed on behalf of

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1 IWV and several other entities.

2 Q Okay. And you said there were two  
3 purposes, and there's also two sections of the  
4 transcript. I assume that you're referring to  
5 the first section of the transcript that's  
6 included?

7 A I think it may bounce around, but it  
8 looks like these hearings were on three separate  
9 days, November 13th and November 14th, and early  
10 December, December 5th. And so you can see that  
11 there's an excerpt from November 13th and an  
12 excerpt from December 5th.

13 MR. BOYDSTON: Nothing further, your  
14 Honor.

15 MS. PLOVNICK: Is this being offered  
16 or --

17 MR. BOYDSTON: Yes, it is.

18 MS. PLOVNICK: We just want to raise  
19 one objection on completeness. It's confusing to  
20 us because the first cover page is just the  
21 November 13th day, but I think there were  
22 snippets from various different days. In some

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1 parts, Mr. Galaz is being crossed. Other parts  
2 look like moving in certain exhibits and  
3 different things. So we feel like that, clearly,  
4 the Board has a copy of this transcript. They  
5 have the whole thing, so we know this is a public  
6 record. But we feel like this is not complete  
7 and a little misleading as presented, so we would  
8 object on that basis.

9 MR. BOYDSTON: Well, your Honor, the  
10 language speaks for itself. If you read it and  
11 it makes no sense to you, then it makes no sense  
12 to you. I think we set it up in a fashion in  
13 which it will make sense to you, especially when  
14 we refer to it in our closing papers and things  
15 like that.

16 JUDGE BARRETT: There are two cover  
17 pages. It's pretty clear.

18 MS. PLOVNICK: There are?

19 JUDGE BARRETT: Yes, there's a  
20 November 13th cover page and then a half dozen  
21 pages back there's another cover page indicating  
22 testimony from December 5th.

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1 MR. MACLEAN: Your Honor, I have no  
2 objection to the admission of this exhibit with  
3 the proviso, with the caveat that the portion of  
4 the exhibit starting on page 545, and you'll see  
5 that that's part of a new section. I would just  
6 ask that it be noted, if Mr. Boydston agrees with  
7 this, that this is actually the cross-examination  
8 conducted, Mr. Galaz's cross-examination  
9 conducted by Mr. Olaniran, which doesn't appear  
10 on the face of the document. But if that's not  
11 in dispute, then I have no objection.

12 MR. BOYDSTON: That is not in dispute,  
13 and that is true.

14 JUDGE BARRETT: Okay, thank you. So  
15 71 is admitted.

16 (Whereupon, IPG Exhibit No. 71 was  
17 received into evidence.)

18 MR. BOYDSTON: Thank you, your Honor.

19 BY MR. BOYDSTON:

20 Q Mr. Galaz, please take -- well,  
21 actually, before you do that, does IPG represent  
22 Billy Graham Evangelistic Association in this

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1 proceeding?

2 A Yes.

3 Q And how long or for which broadcast  
4 years?

5 A It's for a three-year period. Let's  
6 see. 2001, 2002, and 2003.

7 Q Let me ask you to take a look at  
8 what's been marked as Exhibit 73, and are you  
9 familiar with that document?

10 A Yes, I am.

11 Q And it appears to be a letter from a  
12 representative of Billy Graham and then also --  
13 well, actually, two letters from the Billy Graham  
14 Evangelistic Association. Are you familiar with  
15 these documents?

16 A Yes, I am.

17 Q And please explain to us the nature of  
18 the contract between IPG and Billy Graham  
19 Evangelistic Association.

20 A Well, it's actually three separate  
21 contracts, each for a particular broadcast year.  
22 They don't reference the 2001 contract here, but

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1 it exists. Well, I guess that answers your  
2 question.

3 Q An issue has been raised by the SDC as  
4 to whether or not IPG actually agreed to live by  
5 the terms of the agreement between the parties.  
6 Has IPG, to the best of your knowledge, lived up  
7 to the agreement with Billy Graham Evangelistic -  
8 -

9 MR. MACLEAN: I have to object. When  
10 Mr. Boydston adds the qualifier "to the best of  
11 your knowledge," I have to object on the basis of  
12 foundation.

13 MR. BOYDSTON: Sure.

14 BY MR. BOYDSTON:

15 Q What's your position with IPG?

16 A I'm its sole employee.

17 Q And are you familiar with IPG's  
18 agreements with Billy Graham Evangelistic  
19 Association?

20 A Yes.

21 Q Thank you. Has IPG attempted to live  
22 up to the obligations between the written

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1 document that Billy Graham Evangelistic  
2 Association, I should say documents portal that  
3 you referred to -- I'm sorry. Now my question is  
4 a mess, and I have to start over again.

5 Has IPG acted consistent with the  
6 agreement, the written agreements between it and  
7 Billy Graham Evangelistic Association?

8 A Yes, it has.

9 Q I believe that IPG may not have signed  
10 one of those agreements; is that true?

11 A I think we don't have copies of,  
12 signed copies of either 2002 or 2003. But IPG  
13 made the July claims on behalf of Billy Graham.  
14 Billy Graham has cooperated with us. We've moved  
15 forward under an understanding by all parties  
16 that we were representing them for not just 2001  
17 but also 2002 and 2003.

18 Q Thank you.

19 MR. BOYDSTON: Your Honor, I'd like to  
20 move to admit Exhibit 73.

21 MR. MACLEAN: No objection.

22 MS. FLOVNIK: No objections.

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1 JUDGE BARRETT: 73 is admitted.

2 (Whereupon, the above-referred to  
3 document was received into evidence as IPG  
4 Exhibit No. 73.)

5 MR. BOYDSTON: And Your Honor, Mr.  
6 Galaz, please take a look at what's been marked  
7 as Exhibit 79. And, Your Honor, this is not  
8 restricted, so I suppose we can let everyone else  
9 back in.

10 JUDGE BARRETT: Open the doors.  
11 DIRECT EXAMINATION

12 BY MR. BOYDSTON:

13 Q Mr. Galaz, are you familiar with  
14 what's been marked as Exhibit 79?

15 A Yes, I am.

16 Q And what's your understanding of what  
17 it is?

18 A This is a printout from the Internet.  
19 It was submitted into evidence in 1999 federal  
20 proceedings in order to demonstrate that on the  
21 Kenneth Copeland websites, Kenneth Copeland's  
22 website, it purports to be the owner and producer

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1 of the Kenneth Copeland television series, which  
2 goes under a variety of names.

3 (Simultaneous speaking)

4 MR. MACLEAN: Your Honor, I object to  
5 the witness' characterization of this document.  
6 It is not in evidence and move to strike.  
7 JUDGE BARRETT: The identification,  
8 sustained. The identification is that it is a  
9 printout from the World Wide Web.

10 MR. BOYDSTON: Yes.

11 JUDGE BARRETT: Are you offering it  
12 then, Mr. --

13 MR. BOYDSTON: Yes, I was just going  
14 to ask another question to lay the foundation. I  
15 don't think I asked him. I need to ask one more  
16 question before I move to admit.

17 JUDGE BARRETT: Okay.

18 MR. BOYDSTON: Mr. Galaz, did, how did  
19 you come by these documents?

20 THE WITNESS: I went online to the  
21 Kenneth Copeland Ministries web page, as simple  
22 as that.

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1 MR. BOYDSTON: Your Honor, I move to  
2 admit Exhibit 79.

3 MR. MACLEAN: No objection, Your  
4 Honor.

5 MS. FLOVNIK: No objections.

6 JUDGE BARRETT: 79 is admitted.  
7 (Whereupon, the above-referred to  
8 document was received into evidence as IPG  
9 Exhibit No. 79.)

10 MR. BOYDSTON: Thank you, Your Honor.  
11 Please take a look at what's been marked as  
12 Exhibit 80. And let me know if you're familiar  
13 with those documents.

14 THE WITNESS: Yes, I am.

15 BY MR. BOYDSTON:

16 Q And what are they?

17 A This is an excerpt, the online search  
18 for Kenneth Copeland Ministries Works from the US  
19 Copyright Office.

20 Q And how did you come to have it?

21 A I went online and pulled it up and  
22 printed it out. But I only printed out the first

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1 page. And that's why this one number is circled  
2 on the top. It indicates that there's 476  
3 records.

4 MR. BOYDSTON: Your Honor, I'd like to  
5 move to admit Exhibit 80.

6 MR. MACLEAN: Objection on relevance,  
7 Your Honor.

8 MR. BOYDSTON: Well, Your Honor, well  
9 may I ask? Rather than me testify, can I ask the  
10 question?

11 JUDGE BARRETT: Certainly.

12 MR. BOYDSTON: All right, Mr. Galaz,  
13 this appears to be printed out from the copyright  
14 website.

15 And under name it references Kenneth  
16 Copeland and then full title it references  
17 various programs. What is your understanding of  
18 the meaning of that?

19 MR. MACLEAN: Objection to the, Mr.  
20 Boydston's characterization of this document.

21 MR. BOYDSTON: I was just --

22 JUDGE BARRETT: I thought it had

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1 A It's the first page of it says 498  
2 entries actually, copyright registrations that  
3 are made by Kenneth Copeland Ministries. It  
4 includes a variety of works, including their TV  
5 show, music for their TV show, a wealth of  
6 different --

7 MR. BOYDSTON: Your Honor. I'd submit  
8 that the relevance here is that this document  
9 tends to show that Kenneth Copeland's Ministries  
10 has filed documentation such that these programs  
11 belong to Kenneth Copeland Ministries. That's  
12 its relevance.

13 MR. MACLEAN: Your Honor, may I voir  
14 dire?

15 JUDGE BARRETT: You may.

16 CROSS EXAMINATION

17 BY MR. MACLEAN:

18 Q Mr. Galaz, if you take a look at the  
19 column in this document entitled Copyright  
20 Number, do you see that column?

21 A Yes.

22 Q And do you see those numbers that

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1 already been established that it was a printout.

2 MR. MACLEAN: Yes, Your Honor. I  
3 object to Mr. Boydston's characterization of the  
4 full title being, the full title that's listed on  
5 this document being programs. There's no  
6 foundation for that.

7 MR. BOYDSTON: I'm just saying what  
8 the document says and asked the witness to  
9 describe it.

10 JUDGE BARRETT: Overruled.

11 BY MR. BOYDSTON:

12 Q Mr. Galaz, you remember the question?

13 A No.

14 Q This document is from the copyright  
15 website, and it's a chart. And there's a space  
16 that says name and then Kenneth Copeland  
17 underneath there.

18 A Yes.

19 Q And then full title, and there's a  
20 bunch of things that may be titles or maybe geese  
21 as far as I know. What is your understanding of  
22 the document?

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1 appear below the column?

2 A Yes.

3 Q And you see each number begins with a  
4 two letter prefix? Yes?

5 A Yes.

6 Q Do you know what the two letter prefix  
7 TX stands for?

8 A I believe that's text, but I'm not  
9 certain.

10 Q And do you know what the two letter  
11 prefix SR stands for?

12 A Sound recording.

13 Q A majority of these prefixes here are  
14 text and sound recordings, aren't they?

15 A Yes.

16 Q With respect to the three entries here  
17 that have PA, do you know what PA means?

18 A I can't recall what that stands for  
19 online. It's part of the registration, I just,  
20 it's evading me.

21 MR. MACLEAN: Your Honor, renew my  
22 objection on the basis of relevance. There's no



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1 showing that any of these titles is a program or  
2 that any of these titles, more particularly, is a  
3 program claimed in these proceedings.

4 MR. BOYDSTON: Your Honor, I think  
5 that's argumentative, and it's certainly an  
6 argument he can raise. That's no reason to keep  
7 the document out.

8 We believe this says more than that,  
9 but that's for us to argue and ensue. Maybe we  
10 will. Maybe we won't.

11 MR. MACLEAN: I think the time to do  
12 that is now, Your Honor, when we're trying to lay  
13 the foundation of relevance for this document.

14 MR. BOYDSTON: Well, I think we've  
15 explained our theory of the relevance. It is a  
16 piece of indicia that connects Kenneth Copeland  
17 to these titles.

18 JUDGE STRICKLER: What other indicia  
19 is in evidence with regard to the connection of  
20 Kenneth Copeland Ministries to these titles?

21 MR. BOYDSTON: Agreements,  
22 correspondence identifying them, a number of

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1 MR. BOYDSTON: 80.

2 JUDGE BARRETT: 80 for whatever weight  
3 it might have.

4 (Whereupon, the above-referred to  
5 document was received into evidence as IPG  
6 Exhibit No. 80.)

7 MR. BOYDSTON: Thank you, Your Honor.  
8 Please take a look at what's been marked as  
9 Exhibit 81. And this is the transcript of Jan  
10 Harbor.

11 I believe it's already in one of the  
12 SDC exhibits. The format looks a little bit  
13 different, and so I would just ask the council  
14 whether or not there's any difference between  
15 what was in his exhibit and what is in ours.

16 As I said, the formats, this is the  
17 long form format, just a little different  
18 formatting wise, but I otherwise I think it's the  
19 same thing.

20 MR. MACLEAN: So, to answer that  
21 question, this appears to be only Mr. Boydston's  
22 cross examination of this deponent.

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1 other things. This is one. I would say this is  
2 a fairly minor piece of the puzzle.

3 Exhibits 64, which include  
4 representation agreements, Exhibits 65 and 66,  
5 which include the correspondence between parties,  
6 which will identify certain programming.

7 In addition to that I think also the  
8 Jan Harbour declaration and I think also a Jan  
9 Harbour testimony. I think all are, actually  
10 more concrete evidence.

11 But this is, we're offering this as  
12 one of those things.

13 JUDGE STRICKLER: You're saying it's  
14 corroborative, but nothing on it stands alone in  
15 the absence of the corroboration.

16 MR. BOYDSTON: I would say that's  
17 correct.

18 JUDGE BARRETT: For the record, we are  
19 taking official notice that the introductory  
20 initials P-A stand for performing arts, and they  
21 would include television productions. And so  
22 we're going to admit, what is it?

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1 MR. BOYDSTON: Oh, I apologize.  
2 (Simultaneous speaking)

3 MR. BOYDSTON: That's correct. I  
4 apologize.

5 JUDGE BARRETT: Was that included in  
6 your exhibit?

7 MR. MACLEAN: Yes, Your Honor.

8 JUDGE BARRETT: So your exhibit was  
9 total?

10 MR. MACLEAN: Was the total,  
11 transcript, yes.

12 MR. BOYDSTON: Yes, that is correct.  
13 I apologize.

14 MR. MACLEAN: But I mean as long as  
15 that's understood, I have no objection to it.

16 MR. BOYDSTON: I move to admit Exhibit  
17 81.

18 MR. MACLEAN: I have no objection to  
19 81 as long as it's understood this is an excerpt.

20 MS. PLOWNICK: No objection to the  
21 excerpt.

22 JUDGE BARRETT: Exhibit 81 can be

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1 admitted.

2 (Whereupon, the above-referred to  
3 document was received into evidence as IPG  
4 Exhibit No. 81.)

5 DIRECT EXAMINATION

6 BY MR. BOYDSTON:

7 Q Thank you, Your Honor. Mr. Galaz,  
8 please take a look at Exhibit 82. And this is a  
9 piece of correspondence from May of 2002 between  
10 you and it appears to be Barry Gottfried and  
11 Arnie Lutzker and others. Do you recall this  
12 document?

13 A Yes.

14 Q And did you in fact, let's strike  
15 that.

16 Where did you get this document?

17 A I pulled it from the WSG files.

18 MR. BOYDSTON: Your Honor, I'd like to  
19 move to admit Exhibit 82.

20 MR. MACLEAN: I apologize, Your Honor.  
21 I'm just refreshing my recollection as to what  
22 this is. No objection, Your Honor.

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1 JUDGE BARRETT: 82 is admitted.

2 (Whereupon, the above-referred to  
3 document was received into evidence as IPG  
4 Exhibit No. 82.)

5 MR. BOYDSTON: Thank you, Your Honor.

6 All right, Your Honor, Exhibit 83 is the Willie  
7 Wilson exemplar. May I approach?

8 JUDGE BARRETT: 83 is marked in my  
9 list as the --

10 MR. BOYDSTON: I'm sorry, 84.

11 JUDGE BARRETT: -- declaration.

12 JUDGE STRICKLER: 84 is the exemplar.

13 JUDGE BARRETT: Oh, you're right Judge  
14 Strickler. It is 84.

15 MR. BOYDSTON: Yes, I apologize. 83  
16 was the declaration. This is 84, not 83. May I  
17 approach?

18 JUDGE BARRETT: You may.

19 BY MR. BOYDSTON:

20 Q Mr. Galaz, in response to, strike  
21 that.

22 The IPG request from Willie Wilson

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1 Productions, an exemplar of Willie Wilson

2 Productions programming.

3 A Yes, it is.

4 Q And was what I just handed you what  
5 was provided?

6 A This was what was given to us.

7 Q And it was produced to the other  
8 parties, correct?

9 A That's correct.

10 MR. BOYDSTON: Your Honor, I'd like to  
11 move to admit Exhibit 84.

12 MR. MACLEAN: Objection, Your Honor.  
13 The phony foundation that has been laid for this  
14 exhibit is that it is from Mr. Rovin who said it  
15 is not an exemplar of broadcast programming.

16 MR. BOYDSTON: And we simply take  
17 issue with that. We asked for an exemplar from  
18 the party, and this is what they gave us. Mr.  
19 Rovin watched it and drew his conclusion. I  
20 watched it. I drew a different one. You will  
21 watch it. I don't know what conclusion you'll  
22 draw.

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1 MS. PLOVNICK: We renew our objection,  
2 for the record, that what we got didn't look like  
3 that. So he's representing it, and I take that  
4 representation, but I can't make a representation  
5 that is this.

6 MR. BOYDSTON: That's true, Your  
7 Honor. We've got a box and we got that, not that  
8 exact one but one exactly like it. And I opened  
9 it up, and I made copies and sent them off the  
10 counsel.

11 So that's why what Ms. Plovnick was  
12 not in the box, but I will represent it was a  
13 true and correct copy made on my computer of what  
14 was in the box.

15 MS. PLOVNICK: I mean I haven't had an  
16 opportunity to examine the cover. I don't know  
17 if there's any additional information that would  
18 have been helpful to Mr. Rovin or not on the  
19 cover.

20 So maybe I just object to the cover,  
21 but he's saying that the contents of this  
22 occurred the same was what was produced to us.

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1 And I accept that representation. I  
2 saw it's wrapped in shrinkwrap. So that may not  
3 be the exact one he copied.

4 MR. BOYDSTON: It is not. We had a  
5 couple, I think, just two originals. One we were  
6 going to give to the panel. One we gave to the  
7 SDC. And then we made a copy and gave the copy  
8 to the MPAA.

9 MR. MACLEAN: Your Honor, I am  
10 perfectly happy to assume that what's there is  
11 what we received in discovery. Nevertheless, the  
12 foundation hasn't been laid that this is, in  
13 fact, an exemplar of broadcast programming.

14 Dr. Wilson himself doesn't address it  
15 in his declaration, which is where you would  
16 think that foundation would have been laid if  
17 they were able to lay it.

18 JUDGE BARRETT: Exhibit 84 is  
19 admitted.

20 (Whereupon, the above-referred to  
21 document was received into evidence as IPG  
22 Exhibit No. 84.)

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1 MR. BOYDSTON: Thank you, Your Honor.  
2 Shall I provide it to the clerk?

3 JUDGE BARRETT: Please.

4 BY MR. BOYDSTON:

5 Q Thank you. Mr. Galaz, please take a  
6 look at what has been marked as Exhibit 85 and  
7 tell me if you are familiar with those documents.

8 A Yes, I am.

9 Q And what are they?

10 A Again, I had, just to demonstrate the  
11 nature for what it's worth, Singsation program, I  
12 went to the web page for it and started printing  
13 out pages from it.

14 Also, I will note you can't tell from  
15 this or looking at black and white, but you can  
16 actually click on any one of these links, and  
17 well, the first place says watch video clips from  
18 Singsation.

19 So if you actually wanted to see if  
20 there was any issues to what that programming is,  
21 you could click there and it would demonstrate  
22 it.

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1 Q And did you print out these pages from  
2 the Internet?

3 A Yes, I did.

4 MR. BOYDSTON: I'd like to move to  
5 admit Exhibit 85.

6 MR. MACLEAN: Objection, Your Honor,  
7 a couple of different bases. First of all, as  
8 we've said before, the DVD that was just admitted  
9 into evidence is the only exemplar that was  
10 produced to us.

11 It is not an exemplar of broadcast  
12 programming, and therefore, this evidence, IPG 85  
13 should be excluded on the basis of IPG's non-  
14 compliance with the board's discovery order.

15 Also object on the basis of relevance.  
16 If you take a look at most of these pages, there  
17 is a link. There's only a portion shown and then  
18 the link saying more, particularly under  
19 Singsation history.

20 The more isn't provided, and in our  
21 position it isn't relevant. So we object to the  
22 admission on that basis as well.

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1 And finally, I'd like to refer the  
2 court, the board to a ruling that it made with  
3 respect to an SDC exhibit in the 2000-2003  
4 proceeding.

5 We offered an exhibit to the  
6 testimony, we offered the written testimony of  
7 Michael Little, which included printouts of web  
8 pages. IPG objected on the grounds that it was  
9 simply materials printed out from Claimant's web  
10 pages.

11 That objection is sustained. On the  
12 basis of that ruling, we object to this  
13 admission, which is essentially the same kind of  
14 material with respect to Willie Wilson  
15 Productions.

16 MS. PLOVNICK: Your Honor, we will  
17 join the objection on the basis of relevance and  
18 also completeness in that when we were served  
19 with a copy of this exhibit, I went to the  
20 website in an effort to look at this.

21 And none of this is up anymore. It's  
22 totally different content now on the website, so

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1 these particular clips can't actually be viewed.  
 2 There might be other things there, but not these.  
 3 MR. BOYDSTON: Well, Your Honor, again  
 4 we're being accused of not producing something.  
 5 Well, we didn't have anything to produce other  
 6 than what Willie Wilson provided us, which was  
 7 what has been admitted as Exhibit 64.  
 8 With regard to completeness, to the  
 9 extent that we may not have included one page  
 10 from the multifaceted website I don't think makes  
 11 the rest of it suspect or inadmissible in any  
 12 way, shape or form.  
 13 The fact that it's not up on the  
 14 website anymore is a fact of, I take Ms.  
 15 Plovnick's word for that. That's a fact. That  
 16 doesn't mean it wasn't up when it was printed a  
 17 month ago.  
 18 And so we offer it for, we're offering  
 19 it into evidence for whatever persuasiveness it  
 20 may or may not have. I think that much of what's  
 21 been said here goes to weight.  
 22 Maybe there's not much weight, but

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1 this was what was up on the website a month ago.  
 2 And it says what it says, and it speaks for  
 3 itself.  
 4 JUDGE BARRETT: We'll reserve on 85.  
 5 Mr. Maclean, if you could give us the citation to  
 6 that ruling in the prior proceeding.  
 7 MR. MACLEAN: I will. Thank you, Your  
 8 Honor.  
 9 BY MR. BOYDSTON:  
 10 Q Thank you, Your Honor. Mr. Galaz,  
 11 please take a look at what's been marked as  
 12 Exhibit 89. And do you recognize that?  
 13 A 89, mine jumps from 87 to 107.  
 14 Q Okay. And do you recognize this  
 15 document?  
 16 A Yes, I do.  
 17 Q And what is it?  
 18 A A printout that was made by me, just  
 19 background on Regent University, Wikipedia  
 20 article giving the history and background of that  
 21 institution.  
 22 Q And why were you looking into that?

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1 A Simply because the SDC has offered the  
 2 testimony of Dr. Brown. It indicates that he  
 3 works at Regent University.  
 4 MR. MACLEAN: Objection. Actually, we  
 5 have not offered the testimony of Dr. Brown.  
 6 MR. BOYDSTON: Well, not live  
 7 testimony, but there was testimony in the SDC  
 8 rebuttal statement. That's what he's talking  
 9 about there.  
 10 JUDGE BARRETT: Overruled.  
 11 BY MR. BOYDSTON:  
 12 Q Thank you, Your Honor. Please  
 13 continue Mr. Galaz. You said the reason why you  
 14 looked into this was?  
 15 A Simply to demonstrate the objectivity  
 16 of Dr. Brown by virtue of the fact that Regent  
 17 University was originally founded as Christian  
 18 Broadcasting Network University.  
 19 Christian Broadcasting Network is one  
 20 of the SDC represented --  
 21 MR. MACLEAN: Objection to the  
 22 characterization of this document. It's not in

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1 evidence.  
 2 MR. BOYDSTON: All right, that's my  
 3 next step. I move to admit Exhibit 89, yes 89.  
 4 MR. MACLEAN: Objection, Your Honor,  
 5 lack of foundation, relevance and also, I don't  
 6 know this is a Wikipedia page printout.  
 7 MR. BOYDSTON: I offer it for what  
 8 it's worth and it can be judged on its merits.  
 9 MS. PLOVNICK: Our only objection  
 10 would be relevance. Mr. Brown's evidence is not  
 11 in evidence. Is there relevance to this?  
 12 MR. MACLEAN: Dr. Brown.  
 13 MS. PLOVNICK: Dr. Brown, sorry, Dr.  
 14 Brown.  
 15 MR. BOYDSTON: Doctor Brown did submit  
 16 testimony in support of a rebuttal statement.  
 17 That's the relevance.  
 18 JUDGE BARRETT: Doesn't Dr. Brown's  
 19 testimony identify himself, doesn't he identify  
 20 himself as affiliated with Regent University?  
 21 And haven't we had testimony from him  
 22 previously that it was originally established as

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1 Christian Broadcasting Network University?

2 MR. MACLEAN: We have.

3 JUDGE BARRETT: Okay.

4 MR. MACLEAN: All that is true.

5 JUDGE BARRETT: And what does this  
6 add?

7 MR. BOYDSTON: It's just to verify  
8 that. There hasn't been any, everything you just  
9 referred to, Your Honor, was in the prior  
10 proceeding. Well, not the part in his testimony  
11 here about being Regent, but the connection with  
12 Christian Broadcasting hadn't been brought up  
13 before.

14 JUDGE BARRETT: 89 is admitted.

15 (Whereupon, the above-referred to  
16 document was received into evidence as IPG  
17 Exhibit No. 89.)

18 BY MR. BOYDSTON:

19 Q Thank you, Your Honor. Mr. Galaz,  
20 please take a look at what's been marked as  
21 Exhibit 90.

22 A Okay.

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1 that we're here for today.

2 MR. BOYDSTON: Your Honor, the  
3 relevance is that we believe these descriptions  
4 run afoul of the criteria for commercial  
5 programming offered by Dr. Brown in his written  
6 testimony that's relevant herein.

7 And we content in our conclusions of  
8 fact and law to point to these and say well, some  
9 of these don't look all that religious based on  
10 this criteria and make that argument.

11 JUDGE BARRETT: Overruled. 90 is  
12 admitted.

13 (Whereupon, the above-referred to  
14 document was received into evidence as IPG  
15 Exhibit No. 90.)

16 BY MR. BOYDSTON:

17 Q Thank you, Your Honor. Please take a  
18 look at what's been marked as Exhibit 91.

19 A All right.

20 Q And are you familiar with those  
21 document's pages?

22 A Yes, I am.

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1 Q And do you recognize that document?

2 A Yes, I do.

3 Q And what is it?

4 A This was the attachment. I can't  
5 remember which attachment, an exhibit that  
6 appeared in the SDC's 2000 and 2003 written  
7 direct statement.

8 Q And from your understanding, what does  
9 it depict?

10 A Well, it identifies the programs for  
11 which they are making claim in that proceeding  
12 and the significance here is the program  
13 description.

14 MR. BOYDSTON: Your Honor, I'd like to  
15 move that Exhibit 90 be admitted.

16 MR. MACLEAN: Objection, Your Honor,  
17 relevance. None of these programs are being  
18 challenged in this proceeding.

19 And the judges have ordered that any  
20 challenges not raised in advance of this hearing  
21 that we're having today are waived. So I don't  
22 see any relevance whatsoever to this proceeding

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1 Q And what are they?

2 A This is a printout of an Excel  
3 spreadsheet that was produced in discovery by the  
4 SDC in the 2000 to 2003 proceedings. The pages,  
5 just to note, don't run, they run sequentially up  
6 to let's see, Pages 1 through 11.

7 Then it starts over again, one through  
8 four. The reason being that there were two tabs  
9 on the Excel spreadsheet. So one of these was a  
10 printout of one tab, and then it picks up with  
11 the printout of the second tab.

12 MR. BOYDSTON: Your Honor I'd like to  
13 move that Exhibit 91 be admitted.

14 MR. MACLEAN: Same objection with  
15 respect to the last exhibit. And Your Honor, I  
16 would add here, Dr. Brown's testimony is not in  
17 evidence.

18 If IPG would like to rely on it or  
19 refer to it or impeach it or whatever they'd like  
20 to do, then they can offer it into evidence and  
21 we'll address that at the time.

22 But until they do, none of this is

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1 relevant.

2 MR. BOYDSTON: Well, if the SDC is not  
3 going to ask that there be any conclusions of law  
4 or fact based upon Dr. Brown's written testimony,  
5 then this would become irrelevant. But I guess  
6 we kind of got to wait and see what their  
7 arguments are in that regard.

8 JUDGE BARRETT: 91 is admitted.

9 (Whereupon, the above-referred to  
10 document was received into evidence as IPG  
11 Exhibit No. 91.)

12 BY MR. BOYDSTON:

13 Q Thank you, Your Honor. Please take a  
14 look at what's been marked as Exhibit 92. And  
15 are you familiar with this document?

16 A Yes.

17 Q And it appears to be an email exchange  
18 between Warren Judd and Worldwide Subsidy Group.  
19 Is that correct?

20 A That's correct.

21 Q Dated May 13th and 15th, 2004. Did  
22 you receive this and respond to it?

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1 MR. BOYDSTON: I'm trying to establish  
2 its relevance. It's hard for me to establish the  
3 relevance if we don't have any testimony about  
4 what this document is about.

5 JUDGE BARRETT: I don't think it's  
6 going to be impossible, Mr. Boydston, if you ask  
7 the right questions.

8 MR. BOYDSTON: Okay.

9 JUDGE BARRETT: I'm going to admit 92  
10 over the objection.

11 (Whereupon, the above-referred to  
12 document was received into evidence as IPG  
13 Exhibit No. 92.)

14 BY MR. BOYDSTON:

15 Q Thank you, Your Honor. Mr. Galaz,  
16 please explain if you would what you were asking  
17 Mr. Judd, what he was answering, to your  
18 knowledge, in this email exchange?

19 A I was asking about a particular  
20 program that they informed us was their program.  
21 And in order to demonstrate the efforts we had  
22 made to first identify whether our program was

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1 A Yes, I did. Well, I didn't respond to  
2 it. I had initiated the communication, and Mr.  
3 Judd had responded to it.

4 MR. BOYDSTON: Yes, thank you for that  
5 correction. Your Honor, I'd like to move to  
6 admit Exhibit 92.

7 MR. MACLEAN: Objection, Your Honor,  
8 as to relevance and also, I'm just going to stick  
9 with relevance on this one.

10 MR. BOYDSTON: Your Honor --

11 MR. MACLEAN: With any program that's  
12 challenged in this proceeding.

13 MR. BOYDSTON: Your Honor, may I  
14 question the witness?

15 JUDGE BARRETT: You may.

16 MR. BOYDSTON: You asked a question of  
17 Mr. Judd. He answered. What were you asking?  
18 What did you understand him to answer?

19 THE WITNESS: There was --

20 JUDGE BARRETT: Well, that's the  
21 contents of the document that's not admitted at  
22 this point?

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1 devotional or not.

2 In this case, he's saying that it's  
3 not devotional. It's also secondarily he asked  
4 because it's a program being claimed in the  
5 program suppliers category, excuse me, in the  
6 devotional category by the SDC for Calendar Years  
7 2001 and prospective.

8 Q Thank you. Please take a look at  
9 what's been marked as Exhibit 93, and tell me if  
10 you are familiar with that document.

11 A Yes, I am.

12 Q And what is that document?

13 A This is the Appendix C to the  
14 testimony. I can't recall which witness, in the  
15 SDC direct statement for 1999 through 2009  
16 satellite.

17 Q And what is its significance, subject  
18 to your understanding?

19 A A, it ties back to the prior exhibits  
20 which reflect that there are criteria being used  
21 for characterization of a program as devotional  
22 or non-devotional.

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1 And then also I think we were  
2 mentioned McDougall, M.D. also I thought I recall  
3 being included on this. That was my  
4 recollection.

5 MR. BOYDSTON: Your Honor, I move to  
6 admit Exhibit 93.

7 MR. MACLEAN: No objection.

8 JUDGE BARRETT: Thank you. 93 is  
9 admitted.

10 (Whereupon, the above-referred to  
11 document was received into evidence as IPG  
12 Exhibit No. 93.)

13 MR. BOYDSTON: Please take a look at  
14 Exhibit 94 and tell me if you know what that is.  
15 I'll volunteer. I think is 94 not essentially  
16 the same sort of exhibit with regard to cable?

17 THE WITNESS: For the 2004 to 2009  
18 cable titles for SDC, that's correct.

19 MR. BOYDSTON: Your Honor, I move to  
20 admit Exhibit 94.

21 MR. MACLEAN: No objection, Your  
22 Honor.

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1 sustained more on a relevance ground, whether she  
2 had a non-compete or not.

3 MR. BOYDSTON: Understood, Your Honor.

4 JUDGE BARRETT: Okay.

5 BY MR. BOYDSTON:

6 Q Do you understand whether or not All  
7 Global Media submitted claims in these  
8 proceedings?

9 A The way you phrase it by in these  
10 proceedings I'm not sure what you mean. I know  
11 that they filed July claims, but I know that  
12 they've never filed a petition to participate in  
13 these or any proceedings for that matter.

14 Q Thank you. Have you ever been  
15 contacted by any representative from All Global  
16 Media with regard to claims that entity might  
17 have in these proceedings?

18 A No.

19 Q Have you ever seen any documentation  
20 that would establish claims by All Global Media?  
21 Strike that, asked and answered.

22 There's been an allegation by the SDC

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1 MS. PLOVNIK: No objections.

2 JUDGE BARRETT: 94 is admitted.

3 (Whereupon, the above-referred to  
4 document was received into evidence as IPG  
5 Exhibit No. 94.)

6 MR. BOYDSTON: Thank you, Your Honor.  
7 Mr. Galaz, there's been an argument lodged by the  
8 SDC that claims by All Global Media might be  
9 superior to IPG claims.

10 What do you know of, what can you tell  
11 me? What do you know about All Global Media, the  
12 company called All Global Media?

13 THE WITNESS: I know that it's, one of  
14 its principals, if not sole principal is Marian  
15 Oshita. I know that it was founded by her while  
16 she was still a member of IPG and contractually  
17 precluded from competing with IPG.

18 MR. MACLEAN: Objection. I object to  
19 the witness' characterization of a contract  
20 that's not in evidence and that has not been  
21 produced into best evidence.

22 JUDGE BARRETT: The objection is

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1 that IPG may have at one time filed placeholder  
2 claims. First off, can I ask you, what is your  
3 understanding of what is sometimes referred to as  
4 a placeholder claim?

5 A My understanding of a placeholder  
6 claim is when a claim is filed on behalf of an  
7 entity with the intention of acquiring their  
8 authorization subsequently.

9 Q Has IPG ever filed such a claim?

10 A No.

11 Q And are you familiar with changes in  
12 the regulations governing these proceedings with  
13 regard to the names submitted of claims?

14 A Yes.

15 Q And what do you know about that?

16 A My understanding is that at some point  
17 the regulations changed, and it was then added  
18 that the full legal name was required to be  
19 identified.

20 MR. BOYDSTON: Your Honor, I will  
21 continue, but I do notice it's 12 o'clock.

22 JUDGE BARRETT: How much more do you

157

1 have?

2 MR. BOYDSTON: Probably ten minutes,  
3 could be shorter, but --

4 JUDGE BARRETT: We'll take our noon  
5 recess. We will reconvene at 1 o'clock. During  
6 recess, Mr. Galaz, Ms. Woodson, you're not to  
7 discuss the testimony with each other or with  
8 anyone else.

9 MR. BOYDSTON: Thank you, Your Honor.

10 JUDGE BARRETT: Thank you.

11 (Whereupon, the above-entitled matter  
12 went off the record at 12:01 p.m. and resumed at  
14 1:08 p.m.)

14 MR. MACLEAN: Your Honor, with respect  
15 to IPG 85, you asked for the transcript citation  
16 --

17 JUDGE BARRETT: Yes.

18 MR. MACLEAN: -- I was referring to  
19 with respect to the testimony of Mr. Little. The  
20 transcript citation is from the 2000 to 2003  
21 Phase II proceeding, June 6, 2013, Pages 1340,  
22 Line 21 through 1345, Line 2 is where the

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1 MR. MACLEAN: And I could, if there is  
2 no objection, perhaps I could give this to the  
3 clerk and we can provide copies for everybody  
4 else.

5 If we proceed until tomorrow, we can  
6 do that tomorrow. If we do not, then we can do  
7 it by mail or something, email or something.

8 JUDGE BARRETT: Thank you. That would  
9 be fine.

10 JUDGE STRICKLER: Is there anything in  
11 particular on that document you want us to focus  
12 on, or is it there just for the sake of  
13 completeness?

14 MR. MACLEAN: Well, there for the sake  
15 of completeness, but I mean I can, if it would be  
16 helpful to the judges I can read in a couple of  
17 lines that we believe are significant, that we  
18 would want to be considered if this exhibit is to  
19 be admitted or considered.

20 JUDGE STRICKLER: How many is a  
21 couple?

22 MR. MACLEAN: Two.

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1 objection was discussed.

2 And the disposition of that objection  
3 is in the judge's final distribution for Phase  
4 II, 78 Fed Reg 64984 at Page 64987, October 30,  
5 2013.

6 JUDGE BARRETT: Thank you.

7 MR. MACLEAN: Your Honor, also with  
8 respect to the same exhibit, we had an objection  
9 based on completeness of this exhibit.

10 JUDGE BARRETT: Which one is that?

11 MR. MACLEAN: IPG 85.

12 JUDGE BARRETT: Yes.

13 MR. MACLEAN: Over the break we found  
14 in our files a copy of the page that appears if  
15 you click on that more link. This was printed  
16 out on May 11, 2014.

17 I only have this one copy, but I would  
18 ask that, to make the exhibit complete if it is  
19 admitted, that it be admitted in its entirety  
20 along with this portion of the page that we  
21 printed out.

22 MR. BOYDSTON: No objection.

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1 JUDGE STRICKLER: Why don't you have  
2 at it?

3 MR. MACLEAN: Thank you, Your Honor.  
4 Okay. So just to put it into context, the  
5 document is a recitation of the history of Willie  
6 Wilson, of the program Singsation.

7 And there's a line here that says, in  
8 which Mr. Wilson is being, Dr. Wilson is being  
9 quoted, "It's history in the making. Observe the  
10 program's Executive Producer Willie Wilson. We  
11 are making this more than black gospel show. We  
12 are incorporating gospel music."

13 Oh, I'm sorry. It's more than one  
14 sentence, but it's all the same line, "We are  
15 incorporating gospel music from all ethnic groups  
16 and denominations.

17 Gospel music has touched and  
18 influenced people of all races and nationalities.  
19 And we intend to make this program a truly  
20 integrated celebration of music."

21 That's the line that we think is  
22 important to put the website information into



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1 context.

2 JUDGE BARRETT: Okay.

3 JUDGE STRICKLER: And where does it  
4 fit within these documents, the documents that  
5 IPG --

6 MR. MACLEAN: If you take a look at  
7 IPG 85 and you look at the lefthand side of the  
8 document --

9 JUDGE STRICKLER: Yes.

10 MR. MACLEAN: -- you see a little  
11 blurb that says Singsation History? And then  
12 there's a paragraph there at the bottom of the, a  
13 paragraph and a part of another paragraph and  
14 then a link that says more.

15 JUDGE STRICKLER: I see it.

16 MR. MACLEAN: If you click on that  
17 link, that's what comes up. And the paragraph  
18 cited here is the same as the first paragraph of  
19 this page.

20 JUDGE STRICKLER: So you're saying it  
21 should be inserted after that first within the 85  
22 IPG?

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1 MR. MACLEAN: Well, Your Honor, of  
2 course IPG P85 is the one that IPG printed out.  
3 We obviously, all we have is the one we printed  
4 out. We did it earlier.

5 JUDGE STRICKLER: Just so the record's  
6 clear. They were accessed two different times.

7 MR. MACLEAN: That is my own  
8 understanding. May I give this to the clerk?

9 JUDGE BARRETT: If you would, please.  
10 Mr. Boydston?

11 BY MR. BOYDSTON:

12 Q Thank you, Your Honor. Mr. Galaz,  
13 please take a look at what's been marked as SDC  
14 Exhibit 624.

15 A Okay.

16 Q Do you recognize that document?

17 A Yes.

18 Q And what is it?

19 A It was a document that was produced in  
20 discovery as one of several documents that was  
21 underlying the exhibits in IPG's written direct  
22 statement identifying --

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1 MR. MACLEAN: I think that appears on  
2 every page. It's just on all the pages that got  
3 this link to Singsation history. And that's the  
4 link.

5 I mean I would just put it at the end  
6 of IPG 85. I think that would be fine. This is  
7 just what comes up if you hit that, well, what  
8 came up.

9 I understand the website has since  
10 been changed, but as of anyway, May 11, 2014 when  
11 this was printed, that's what came up when you  
12 hit that link.

13 JUDGE BARRETT: How many pages is it,  
14 Mr. MacLean?

15 MR. MACLEAN: Three, Your Honor.

16 JUDGE BARRETT: Okay. Then the clerk  
17 will just add those three pages to --

18 JUDGE STRICKLER: Just a quick  
19 question, it actually came up May 14, 2014? The  
20 document in question has got a date on it of  
21 November 18, 2014. So they, the website was  
22 accessed at two different times.

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1 JUDGE BARRETT: It's marked as  
2 restricted.

3 MR. BOYDSTON: Oh yes, I'm sorry.

4 JUDGE BARRETT: Thank you, gentlemen.

5 BY MR. BOYDSTON:

6 Q Go ahead and continue.

7 A It was one of the documents that IPG  
8 produced as one of the, several documents  
9 underlying IPG's written direct statements  
10 specifically those portions of IPG's written  
11 direct statement identifying which claimants and  
12 programs are represented.

13 However, I think that this is  
14 incomplete now that I see it.

15 Q Okay. Now, it seems to have one  
16 column that's programs and then another column  
17 days and category. And then a third column  
18 that's Claimant.

19 The final column says Claimant time  
20 restrictions. Are the claimants listed under the  
21 Claimant section, IPG Claimants?

22 A Yes.

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1 Q And what was the purpose of creating  
2 this document?

3 A It was a tool that was being used by  
4 an expert witness in order to run a program that  
5 they had that according to their offered  
6 methodology would ascribe a value to a particular  
7 broadcast.

8 Q Okay. If you scroll down a few pages,  
9 let's see. Specifically, let's see, the one,  
10 two, three, four, in the fifth page, strike that.

11 In the eighth page, the first title in  
12 the lefthand column is Lost and Found. And two  
13 columns to the right it lists this Envoy  
14 Productions, Paradigm Pictures Corporation under  
15 the column for Claimants. Do you see that?

16 A Yes.

17 JUDGE BARRETT: I'm sorry. I don't  
18 see a column that starts with Lost and Found.

19 THE WITNESS: Actually it's the second  
20 item.

21 MR. BOYDSTON: Oh.

22 THE WITNESS: I guess the first item

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1 Do you recall being instructed to do  
2 that?

3 THE WITNESS: Yes.

4 MR. BOYDSTON: And, in fact, did IPG  
5 do that?

6 THE WITNESS: Yes, and just for  
7 clarification, it was agreements amongst any  
8 parties appearing in that Claimant column.

9 MR. BOYDSTON: Correct.

10 MR. MACLEAN: I'll object to the  
11 characterization of the order. In fact, I  
12 believe the judges can take official notice of  
13 the order itself and then ask for that.

14 MR. BOYDSTON: I was just asking if he  
15 responded to the order.

16 JUDGE BARRETT: Okay. Go on.

17 MR. BOYDSTON: Did Envoy Productions  
18 and Promark television respond to your inquiries  
19 in that regard?

20 THE WITNESS: Yes, they did.

21 MR. BOYDSTON: And what did they  
22 respond with?

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1 is grayed in. It says City that Forgot About  
2 Christmas.

3 MR. BOYDSTON: Yes, the first side is  
4 shaded. It's I believe the seventh page, and it  
5 looks like this.

6 JUDGE BARRETT: Seventh side or  
7 seventh sheet?

8 MR. BOYDSTON: Well, the seventh side,  
9 if you will.

10 THE WITNESS: I think it's the  
11 eighth.

12 MR. BOYDSTON: I stand corrected.  
13 Maybe it's the eighth.

14 JUDGE BARRETT: Okay. Thank you.

15 JUDGE STRICKLER: The eighth side?

16 MR. BOYDSTON: Sorry, the eighth, I'm  
17 mistaken. Correct. I'll represent to you that  
18 there's a discovery order issued in these  
19 proceedings by which IPG was directed to contact  
20 its claimants and request copies of any contracts  
21 between the parties whose name appear in this  
22 Claimant column, if you will.

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1 MR. MACLEAN: Objection, hearsay.

2 And, Your Honor, I'll remind the judges, IPG has  
3 already offered into evidence and the  
4 declarations were objection to this extent,  
5 declarations for Envoy Productions and Promark  
6 Television.

7 And the judges have already ruled and  
8 have already excluded the portions of those  
9 declarations that relate to an alleged agreement  
10 between Envoy and Promark on the grounds that no  
11 such agreement was produced to us.

12 MR. BOYDSTON: I would suggest there's  
13 good cause here for the hearsay because this was  
14 directing responding to an order by Your Honors.

15 And that's what we are relating here  
16 is what was the response to an order by Your  
17 Honors. And I think that's good grounds.

18 JUDGE BARRETT: Can we get the IPG  
19 exhibit number that we're talking about?

20 MR. BOYDSTON: The IPG exhibit number  
21 we're talking about, now I'm confused. Oh, that  
22 Mr. MacLean is referring to?

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1 JUDGE BARRETT: Correct. Exhibit 69  
2 and Exhibit 86, do those seem to be the ones  
3 we're talking about?

4 MR. MACLEAN: I believe that is  
5 correct, Your Honor.

6 MR. BOYDSTON: Yes, that is.

7 MR. BOYDSTON: Yes, Your Honor.  
8 That's correct.

9 MR. MACLEAN: With respect to Exhibit  
10 69, I objected specifically to Paragraph 4. That  
11 was excluded. And with respect to Exhibit 86, I  
12 objected to Paragraph 3 on this basis. And that  
13 was excluded.

14 Mr. Galaz should not be allowed to  
15 testify to what's in those, to the content  
16 essentially or the subject of those paragraphs  
17 since they've been excluded from the declarations  
18 on the grounds that we were given no notice  
19 whatsoever of this alleged relationship until we  
20 received these exhibits.

21 JUDGE BARRETT: All right, is either  
22 69 or 86 restricted?

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1 go and check with its clients to see if they have  
2 a contract between them.

3 The clients then responded yes, we do.  
4 Now they also have them put that in their  
5 declarations. I still don't understand why that  
6 is objectionable, but you did rule that that was  
7 not admissible in the declarations.

8 Still, I think it's odd that IPG made  
9 an inquiry based upon the order of the judges,  
10 and now we're not, somehow not allowed to tell  
11 what the requested inquiry was. Your Honor --

12 JUDGE BARRETT: What's the date of the  
13 order in question?

14 JUDGE STRICKLER: July 30th, all  
15 right.

16 MR. BOYDSTON: I believe it was part  
17 of that July 30th order, yes.

18 MR. MACLEAN: I believe that's  
19 correct, Your Honor. The order wasn't for them  
20 to inquire. The order was for them to produce  
21 the documents. And it wasn't just the agreements  
22 themselves. It was all documents.

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1 MR. BOYDSTON: No.

2 JUDGE BARRETT: Okay.

3 MR. BOYDSTON: May I address that,  
4 Your Honor?

5 JUDGE BARRETT: Yes, you may.

6 MR. BOYDSTON: All right, Your Honor,  
7 I don't believe this should've been restricted or  
8 taken out in the first place. Again, their  
9 argument is that they were provided no notice of  
10 the relationship between the two entities.

11 There was not a specific request that  
12 that be done. If that was the judge's order that  
13 IPG inquiry amongst its clients as to this issue  
14 for anybody where there were two entities listed  
15 in this cell of this document we're looking at,  
16 Exhibit 624, and IPG did that.

17 And IPG reported the result of that.  
18 The result of that was that these entities said  
19 yes. We have an agreement between them. So I  
20 don't understand where this is all coming from.

21 They made a motion, and they got an  
22 order from Your Honors saying that IPG needs to

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1 MR. BOYDSTON: We did. I'm sorry. Go  
2 ahead.

3 MR. MACLEAN: It was all documents  
4 relating to agreements, including correspondence.  
5 And we had a request, okay, here we go.

6 Our follow up request, Document  
7 Request Number 5, produce all documents,  
8 including agreements, emails and correspondence  
9 regarding claims filed by IPG in these  
10 proceedings on behalf of Great Plains  
11 Instructional Educational Library.

12 And then we list all the Claimants.  
13 Oh, I'm sorry. I'm reading the wrong request.

14 MR. BOYDSTON: But that request --

15 JUDGE BARRETT: Just a minute, Mr.  
16 Boydston.

17 MR. MACLEAN: I apologize, Your Honor.  
18 I was reading the wrong request. I'm sorry. I  
19 lost your page. Okay.

20 MR. BOYDSTON: Your Honor, we don't  
21 dispute that this was requested and ordered. I  
22 don't know if we need to waste time on this.

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1 MR. MACLEAN: Okay. Your Honor, it  
2 was our Follow Up Request Number 1. This is in  
3 SDC Exhibit 25, 625, SDC Exhibit 625.  
4 We requested to produce all documents  
5 relating to written agreements between Envoy  
6 Productions and any of the following entities  
7 relating to any television program claimed in  
8 these proceedings.  
9 And then we list all the entities that  
10 are listed in that spreadsheet along with Envoy  
11 Productions. And that would include Promark  
12 Television.  
13 MR. BOYDSTON: So stipulated.  
14 MR. MACLEAN: Then we move to compel  
15 that IPG produced nothing, saying they had  
16 nothing in their possession.  
17 We didn't move to compel, our argument  
18 being, whether IPG has anything in its possession  
19 is not the issue. The issue is do the Claimants  
20 in the proceeding have anything in their  
21 possession.  
22 And that's what we're moving to

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1 compel. IPG responded and we said IPG is  
2 apparently asserting some relationship between  
3 these entities.  
4 IPG, in its opposition, said just  
5 because we list them together doesn't mean we're  
6 asserting a relationship. There might be  
7 agreements. There might not be agreements.  
8 The judges compelled a response to our  
9 request, which is not limited to agreements, all  
10 the documents relating to agreements, which would  
11 include correspondence regarding agreements.  
12 It would include correspondence based  
13 on the agreements like royalties and accounting  
14 and things like that.  
15 IPG's response to that following the  
16 judges' order was IPG does not currently have any  
17 responsive documents in its possession, custody  
18 or control.  
19 No documents will be produced. No  
20 notice whatsoever given that IPG was, in fact,  
21 asserting any relationship between any of these  
22 entities until we received IPG's exhibits, which

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1 was the Tuesday before last.  
2 That was the first time we ever knew  
3 that IPG asserts that there was a distribution  
4 agreement between Promark Television and Envoy  
5 Productions.  
6 And there's nothing produced, no  
7 correspondence, no nothing other than these two  
8 declarations and now Mr. Galaz's I take it is  
9 about to testify what he, about his oral  
10 conversations.  
11 All this is hearsay. More  
12 importantly, all this is trial by ambush because  
13 we were not given any notice of this, any notice.  
14 In fact, on the contrary, we were  
15 misled in the other direction, that IPG's  
16 argument just because we put these names together  
17 on the spreadsheet doesn't mean that there's a  
18 relationship.  
19 MR. BOYDSTON: I'm going to ask that  
20 counsel make their arguments and try to make them  
21 more concisely. We're running out of time, and  
22 this is a tempest in a teapot. Ms. Olaniran?

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1 MR. OLANIRAN: May I, Your Honor? I  
2 would just hesitate, as much as I really hesitate  
3 to do this, but I have sat here for a few minutes  
4 and Mr. Galaz is making hand gestures, mouthing  
5 words to counsel. And I would appreciate if you  
6 could please direct him to not do so.  
7 JUDGE BARRETT: Thank you, Mr.  
8 Olaniran. Communication is not necessary for  
9 this point, Mr. Galaz.  
10 MR. BOYDSTON: Your Honor --  
11 JUDGE BARRETT: Judge Strickler?  
12 JUDGE STRICKLER: I just want to make  
13 sure I understand the reason why you're trying to  
14 elicit this testimony. Maybe there's not a  
15 dispute here.  
16 Is it that you're not introducing this  
17 for the truth of the matter or asserted, that is  
18 to say not that there's any relationship between  
19 Envoy and Promark but simply to have the witness  
20 tell us what he did in response to the order so  
21 that whatever he tells us about he responded  
22 we're not going to take it for the truth of the

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1 matter?

2 We're just going to listen to his  
3 testimony as to how he responded to the July 30th  
4 order in that regard.

5 MR. BOYDSTON: Well, I also ask that  
6 it be that the hearsay issue be waived for good  
7 cause, but certainly, even if that's not going to  
8 happen, I would like to have that testimony  
9 elicited for the purpose you just described, to  
10 show that IPG made the inquiry it was directed to  
11 make and what was given in response by Envoy and  
12 Promark.

13 JUDGE STRICKLER: But if there's no  
14 dispute or issue as to whether or not IPG  
15 complied or not with regard to a discovery order,  
16 why do we need to hear it for that purpose?

17 MR. BOYDSTON: We have Mr. MacLean  
18 here saying that we didn't respond, that we  
19 didn't provide them this information, this trial  
20 by ambush, et cetera, et cetera, et cetera.

21 JUDGE STRICKLER: Well, it may or may  
22 not be trial by ambush, but that would have

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1 that it had no documents and that it was not  
2 asserting a relationship or would not assert a  
3 relationship.

4 MR. MACLEAN: Two different points.

5 JUDGE BARRETT: Okay.

6 JUDGE STRICKLER: You were reading  
7 from 625?

8 MR. MACLEAN: Yes, Your Honor.

9 JUDGE STRICKLER: Counsel, what page?

10 MR. MACLEAN: Page 17 follow up  
11 request, Document Request Number 1 is our request  
12 and Response to Request Number One is IPG's  
13 response.

14 And if you take a look at the date of  
15 this document, you'll see it's August 11th, which  
16 is the date by which IPG was ordered to comply  
17 with your July 30th discovery order.

18 So this is the response that we got  
19 after IPG was ordered to produce documents in  
20 response to this discovery request.

21 In IPG's opposition to our motion to  
22 compel documents in response to this discovery

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1 nothing to do with whether or not IPG complied  
2 with the discovery order or not.

3 And I don't hear either of your  
4 adverse parties saying they want a sanction or a  
5 ruling based on failure to engage in appropriate  
6 discovery. Am I right, counsel?

7 MR. MACLEAN: With respect to this  
8 issue, that's correct, Your Honor. We simply  
9 object to any evidence being offered to show  
10 relationship in which we were given no notice  
11 whatsoever.

12 JUDGE STRICKLER: You're not arguing  
13 that IPG did not comply with the discovery order.  
14 You're saying that their compliance demonstrates  
15 the absence of a document.

16 MR. MACLEAN: Well, Your Honor, I  
17 don't know whether they complied or not. All I  
18 know is that we didn't receive anything in  
19 discovery that would alert us to the existence of  
20 a relationship here.

21 JUDGE BARRETT: And let me make sure  
22 I heard you correctly. You said IPG responded

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1 request, we had made the argument, if IPG is  
2 asserting a relationship between these entities,  
3 we need the agreements and the correspondence and  
4 so forth in connection with those agreements.

5 IPG's response to that was just  
6 because we list two entities side by side on the  
7 spreadsheet doesn't mean that there's a  
8 relationship between them. It could just mean  
9 that they're planning two different programs.

10 JUDGE FEDER: Where does that appear?

11 MR. MACLEAN: It's in IPG's opposition  
12 to our motion to compel, and I believe Ms. Lynch  
13 is looking up when that was filed now.

14 I certainly ask the judges to take  
15 judicial notice of that, official notice of that  
16 opposition.

17 MR. BOYDSTON: Your Honor, we're  
18 getting lots of speeches. I just want to ask the  
19 witness to explain.

20 JUDGE BARRETT: Just a minute Mr.  
21 Boydston. We're not going anywhere. I'm sorry.  
22 You might like to catch a flight tonight, but it

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1 will happen or it won't.

2 MR. BOYDSTON: Understood.

3 MR. MACLEAN: Your Honor, I believe  
4 that the opposition you're referring to is IPG's  
5 Opposition dated June 26, 2014. And I will infer  
6 up to --

7 JUDGE BARRETT: That predates this  
8 follow up, response to the follow up request.

9 MR. MACLEAN: Well, it predates this  
10 response because this was in the opposition to  
11 our motion to compel. So in that opposition,  
12 they say, and I'm looking here at Page 3 of their  
13 opposition.

14 They say specifically, "the SDC  
15 referred to an Excel spreadsheet produced by IPG  
16 only in discovery, pursuant to which IPG  
17 summarizes the particular years for which IPG is  
18 making claim for programs of a particular title  
19 and the various parties from whom IPG secured the  
20 rights to make claim for such title over the  
21 course of royalty years in the proceedings."

22 It says then, skipping down to the

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1 next paragraph, it says, "For example, if IPG  
2 made claim for a particular program title for  
3 Calendar Year 2006, then such title would appear  
4 on the reference summary with one, the program  
5 title, two, the name of the granting party, and  
6 three, the year 2006 in sequential columns.

7 If IPG were making claim for the same  
8 title, even a different program but with the same  
9 title for Calendar Year 2009 and receive  
10 authorization from a different grantor, IPG  
11 summary would reflect one, the program title,  
12 two, the names of both granting parties, and  
13 three, the years 2006 and 2009.

14 Such summary, however, does not refer  
15 to, assert or suggest the existence of agreements  
16 and correspondence between such granting parties,  
17 which may relate to different programs and have  
18 come into their claimed program list in a  
19 multitude of ways."

20 This put us on, this tells us that  
21 just because they put down two claimants in the  
22 same line doesn't mean they're asserting that

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1 it's the same program or that the claimants have  
2 any relationship.

3 Now for the first time in the exhibits  
4 produced to us only for this hearing the Tuesday  
5 before last, they say well, with respect to Envoy  
6 and Promark, there was a distribution agreement.

7 First time we ever heard that. First  
8 time we had any opportunity to try to challenge  
9 it. And as I said last time, we rely on this.

10 I mean we relied on what we had, and  
11 their responses to our discovery questions.

12 When we make tactical decisions as to  
13 how to prepare for this hearing, including  
14 whether or not we engage, we spend our resources  
15 to engage an expert witness to review Envoy  
16 programming, which we decided not to do.

17 We're responsible for that decision,  
18 but we were entitled to make that decision based  
19 on complete information and not based on a, what  
20 it turns out to be, misleading statement of IPG's  
21 position in this matter with regard to program  
22 titles that are claimed by multiple claimants.

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1 MR. BOYDSTON: I don't believe it was  
2 misleading. You will make that determination  
3 when it's argued.

4 JUDGE BARRETT: You were asking your  
5 client about IPG Exhibit 69. Is that right?

6 MR. BOYDSTON: No, I wasn't actually.  
7 That got brought up. But the question was --

8 JUDGE BARRETT: 624.

9 MR. BOYDSTON: Really, I was referring  
10 to SDC 624. My question was when you went to,  
11 after the order came down and you went to Envoy  
12 and went to Promark and you said, do you have any  
13 contracts between you, what did they say and what  
14 did they give you in response.

15 That was my question, and then we had  
16 everything else after that. That's the question,  
17 pure and simple. It was objected to.

18 JUDGE BARRETT: Sustained.

19 MR. BOYDSTON: Thank you. I'll move  
20 on. Mr. Galaz, are you familiar with Bob Ross  
21 Inc.?

22 THE WITNESS: Yes.

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1 BY MR. BOYDSTON:

2 Q And how did you first learn of the  
3 entity Boss Ross, Inc.?

4 A It became an IPG represented claimant.  
5 I actually didn't have any, excuse me. I  
6 actually didn't have any direct relationship with  
7 Bob Ross Inc. It was a claimant that had been  
8 secured by Marian Oshita.

9 Q When you testified about the fact that  
10 you were not involved in a variety of different  
11 aspects of the IPG business for some time when  
12 you were incarcerated, et cetera, at some point  
13 in time after that, when you got back involved  
14 more heavily with IPG, did you at that time see  
15 that IPG had filed claims for Bob Ross Inc.?

16 A Yes, and that included the year in  
17 which I was incarcerated in which Marian Oshita  
18 made claim. That would've been July 2004 for  
19 2003 broadcasts.

20 Q And did IPG then make claims for Bob  
21 Ross Inc. after that?

22 A Yes.

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1 Q And did IPG receive, well, what claims  
2 specifically did IPG make on behalf of Bob Ross  
3 Inc. And when I say specifically I mean what  
4 category?

5 A Well, we made claim in the July  
6 claims. You didn't necessarily specify in the  
7 July claim what category the programming was.  
8 It's to my knowledge all out of the PBS broadcast  
9 category.

10 Q At some point then did IPG receive  
11 royalty payments through the public broadcasting  
12 category for Bob Ross Inc.?

13 A Yes. For the PBS category we don't  
14 challenge PBS. They have their own internal  
15 method of distribution.

16 I don't necessarily agree with it, but  
17 I know it's not biased. I don't believe it's  
18 biased by any means.

19 So we file it with them and to the  
20 extent that we have any IPG represented claimant  
21 whose programming comes up in the PBS category,  
22 then we'll get accounted to, it'll be collected

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1 and accounted to by PBS.

2 Q And when that happened, did IPG then  
3 send money to Bob Ross Inc.?

4 A Yes, over the next decade we received  
5 several accountings from PBS and continue to  
6 account to them.

7 Q Please look at what's been marked and  
8 admitted as Exhibit 53, and I'll just remind  
9 everyone that Exhibit 53 was appended, if you  
10 will, to include the additional pages that Mr.  
11 MacLean provided.

12 And I think it's now part of all of  
13 our Exhibit 53, just a reminder that that  
14 happened. Now looking at Exhibit 53, Mr. Galaz,  
15 the first page is a letter dated January 16, 2013  
16 to me from Bob Ross Inc.

17 The second page is an email, and then  
18 the third, fourth and fifth pages were  
19 attachments to that email. And the last of those  
20 is a very small spreadsheet entitled search  
21 results. Do you see that?

22 A Yes.

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1 Q Are you familiar with that document?

2 A Yes, I prepared that.

3 Q And it seems to reflect payments made  
4 to Bob Ross Inc. Is that what it is?

5 A Yes, it was.

6 Q So these payments by IPG to Bob Ross  
7 Inc.?

8 A That's correct, and it reflects the  
9 dates in which the monies were received and then  
10 accounted.

11 Q Prior to 2013, are you aware of  
12 whether or not Bob Ross Inc. ever contacted IPG  
13 regarding any of these payments?

14 A There was no challenge to it. I know  
15 that they never contacted us to say what is this  
16 for.

17 Q And did IPG communicate with Bob Ross  
18 Inc. to obtain programming information during the  
19 time period prior to 2013?

20 A Yes, I believe in 2012 we had.

21 Q And did Bob Ross Inc. respond?

22 A My recollection is that they didn't.

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1 Q Okay. At any time prior to 2013, did  
2 Bob Ross Inc. ever inform IPG that IPG was not  
3 entitled to collect contract royalties for Bob  
4 Ross Inc.?

5 A No.

6 Q Did, prior to 2013, did Bob Ross Inc.  
7 ever return any checks sent to it by IPG?

8 A No.

9 Q Prior to 2013, did Bob Ross Inc. ever  
10 tell IPG that Bob Ross Inc. had entered into an  
11 agreement with All Global Media?

12 A No.

13 Q Prior to 2013, did you have any  
14 awareness independent of that that All Global  
15 Media had an agreement with Bob Ross Inc.?

16 A I'm sure I didn't.

17 JUDGE BARRETT: I'm sorry. You're  
18 sure you --

19 THE WITNESS: I'm sure I did not.

20 JUDGE BARRETT: You did not.

21 THE WITNESS: Yes.

22 JUDGE BARRETT: Thank you.

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1 MR. BOYDSTON: Now, in 2013 were you  
2 apprised of the letter that was sent to my office  
3 that's the first page of Exhibit 53?

4 THE WITNESS: Yes.

5 MR. BOYDSTON: And at that time were  
6 you surprised that Bob Ross Inc. was taking the  
7 position it was?

8 MR. MACLEAN: Objection, relevance as  
9 to Mr. Galaz's surprise.

10 JUDGE BARRETT: Sustained.

11 MR. BOYDSTON: Withdrawn. Please take  
12 a look at the document which is the one, two,  
13 three, four, five, I believe it's the sixth page  
14 of Exhibit 53. The email at the top is email  
15 from me to Walabri. I believe that's Mr.  
16 Kowalski.

17 JUDGE BARRETT: Mr. Boydston, I don't  
18 have 53 marked as admitted. Has it been offered?

19 MR. BOYDSTON: I believe it was  
20 admitted.

21 JUDGE BARRETT: The clerk agrees with  
22 you. Okay. Thank you.

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1 BY MR. BOYDSTON:

2 Q I actually want to refer you to the  
3 emails, the cc, if you will. And the second cc  
4 is memangum@pbs.org. Are you familiar with that  
5 email address?

6 A Yes, Marc Mangum. I understood to be  
7 just from his email address with PBS and Steve  
8 Friedman for PBS as well.

9 Q And I believe you instructed me to  
10 include that individual and an individual named  
11 Friedman from PBS on any communications.

12 Correct?

13 MR. MACLEAN: Objection, leading.

14 MR. BOYDSTON: I'll re-ask it.

15 JUDGE BARRETT: Sustained. Thank you,  
16 Mr. Boydston.

17 BY MR. BOYDSTON:

18 Q Did IPG wish to include the PBS on its  
19 correspondence with Bob Ross Inc. about these  
20 issues?

21 A Oh, absolutely.

22 Q And why was that?

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1 A Well, the initial letter, that's the  
2 first exhibit here that was received by your  
3 office January 17th came immediately on the heels  
4 of our receipt of monies from PBS.

5 We actually received the monies on  
6 January 7th and then this letter came dated  
7 January 17th. So it was immediately after that.  
8 There was actually a lot of allegations that were  
9 being made.

10 We wanted everything to be out in the  
11 open and obviously we couldn't do that or, well,  
12 we couldn't do that unless we apprised PBS of  
13 exactly what was going on.

14 So it was our instruction to you to  
15 include Steve Friedman, who I've dealt with for  
16 15 years or more on this and Mr. Mangum who had  
17 ended up on some, I think, prior email.

18 Q Has anyone from PBS contacted IPG with  
19 regard to Bob Ross Inc. since the beginning of  
20 2013?

21 A No.

22 MR. BOYDSTON: Thank you, Your Honor.



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1 I have nothing further.

2 MR. MACLEAN: Your Honor, I have some  
3 cross examination. Can we take our afternoon  
4 break now? It would give me about a few minutes  
5 to choose which exhibit binders I'm going to lug  
6 over there.

7 JUDGE BARRETT: We can take five  
8 minutes. It's way too early to take our 15  
9 minute break.

10 MR. MACLEAN: Yes, Your Honor.

11 JUDGE BARRETT: We'll take five  
12 minutes.

13 (Whereupon, the above-entitled matter  
14 went off the record at 1:44 p.m. and resumed at  
15 1:52 p.m.)

16 JUDGE BARRETT: Please be seated. Mr.  
17 MacLean.

18 CROSS EXAMINATION

19 MR. MACLEAN: Yes, Your Honor. Thank  
20 you. Good afternoon, Mr. Galaz.

21 THE WITNESS: Good afternoon.

22 BY MR. MACLEAN:

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1 I think it was an issue which category it was  
2 coming into because this is when during the '99  
3 proceeding we hadn't had a ruling yet as to Feed  
4 the Children's categorization.

5 So it was being identified as  
6 potentially within one of the other, obviously  
7 contingent upon what was occurring in the '99  
8 cable proceedings.

9 Q Could you turn to, I'm still on MPAA  
10 Exhibit 307, which includes two declarations?

11 A It's the Feed the Children  
12 declaration?

13 Q Yes. There's a declaration. Well,  
14 actually there was a Feed the Children Inc.'s  
15 notice concerning representation and motion to  
16 substitute.

17 And behind that there's a Declaration  
18 of Travis Arnold, and behind that there is an  
19 email called Exhibit 1 to the Declaration of  
20 Travis Arnold, an email from Mary Rasenberger to  
21 BrianB@ix.netcom.com. That's Mr. Boydston's  
22 email address. Correct?

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1 Q I'd like you to take a look at MPAA  
2 Exhibit 307. Mr. Galaz, when this exhibit first  
3 came up, I heard your counsel say an objection  
4 that IPG is not claiming Feed the Children in  
5 this proceeding. Is that accurate?

6 A Well, I think that the issue was  
7 whether or not it's been claimed in the  
8 devotional category.

9 Q I'm just asking is Feed the Children  
10 being claimed?

11 A In the entire proceeding, it's being  
12 claimed in the program suppliers category. I'm  
13 sorry.

14 Q Okay. So Mr. Boydston was wrong about  
15 that?

16 A I think from a literal standpoint that  
17 was incorrect.

18 Q And moreover IPG actually did claim  
19 Feed the Children in the devotional category at  
20 the beginning of this proceeding. Isn't that  
21 right?

22 A At the beginning of this proceeding,

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1 A That's correct.

2 Q And WorldwideSG@aol.com, which is  
3 IPG's email address. Is that correct?

4 A That's correct.

5 Q Okay. Did you receive this email when  
6 it was sent on July 1, 2014?

7 A I'm sure I did.

8 Q This email purports to terminate IPG's  
9 representation of Feed the Children. Is that  
10 right?

11 A Not entirely. You look halfway down  
12 it says for 2013 calendar year or any future  
13 years.

14 Q Okay. So did IPG file a claim on  
15 behalf of Feed the Children for 2013 or any  
16 future years?

17 A Yes.

18 Q And that claim was filed after July 1,  
19 2014. Correct?

20 A Correct.

21 Q Did IPG produce this email here to the  
22 SDC in this proceeding?

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1 A I'm not certain.  
 2 Q Did IPG produce this email to the SDC  
 3 in the 1999 proceeding?  
 4 A I'm certain it wouldn't have because  
 5 that would've, this post-dated the '99  
 6 proceeding.  
 7 Q Let me turn to, could you turn to,  
 8 while we're on the MPAA's, MPAA Exhibit 302?  
 9 A Okay.  
 10 Q Now you understand that the SDC has  
 11 challenged IPG's claims on behalf of Jack Van  
 12 Impe, Life Outreach and Willie Wilson Productions  
 13 for 2008 satellite. Is that right?  
 14 A I understand that. Correct.  
 15 Q And if you take a look at MPAA Exhibit  
 16 302 about 20 pages from the end, and each page,  
 17 of course, is double sided. So it's 20 sides  
 18 from the end.  
 19 This is IPG's joint satellite claim  
 20 for 2008. Correct?  
 21 A Yes.  
 22 Q This is from, and you understand this

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1 to be from the copyright office's or certified  
 2 record from the copyright office. Correct?  
 3 JUDGE BARRETT: I believe it's from  
 4 the Copyright Royalty Board.  
 5 MR. MACLEAN: Thank you, Your Honor,  
 6 certified record from the Copyright Royalty  
 7 Board. Correct?  
 8 THE WITNESS: Yes.  
 9 BY MR. MACLEAN:  
 10 Q This differs from the document that  
 11 you, the revised document that you put into your  
 12 own exhibit list. Correct.  
 13 A I think this one we saw that it was  
 14 missing Pages 4, 5, 9 and 10 of the exhibit.  
 15 Q And so just to, and Pages 4, 5, 9 and  
 16 10 would have been where Jack Van Impe and Life  
 17 Outreach and Willie Wilson Productions, I take it  
 18 you to be saying they would've been there if  
 19 those pages had been included.  
 20 A Yes, I'm sure that they would've been.  
 21 Q So if I understand your testimony  
 22 correctly, these entities, in fact, do not appear

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1 in your satellite claim because your satellite  
 2 claim is missing those three pages?  
 3 A I'm sorry. Say that again.  
 4 Q These three entities, Jack Van Impe,  
 5 Life Outreach and Willie Wilson Productions are  
 6 not in your 2008 satellite plan because your 2008  
 7 satellite plan is missing those three pages.  
 8 A Well, they don't appear on this  
 9 document. That's correct.  
 10 Q Okay.  
 11 JUDGE STRICKLER: Which names are that  
 12 again, Counsel?  
 13 MR. MACLEAN: Jack Van Impe, Life  
 14 Outreach.  
 15 JUDGE STRICKLER: Hang on one second.  
 16 Go ahead. I'm sorry.  
 17 MR. MACLEAN: Jack Van Impe, Life  
 18 Outreach and Willie Wilson productions.  
 19 THE WITNESS: Actually I have to  
 20 qualify that. Actually with Willie Wilson  
 21 Productions no, that's incorrect because if you  
 22 actually look at the second page of the document,

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1 it's actually identified Willie Wilson  
 2 Productions as one of the entities for which we  
 3 had provided an exemplar broadcast information.  
 4 It's on Page 2.  
 5 JUDGE STRICKLER: Which entity?  
 6 MR. GALAZ: Willie Wilson Productions.  
 7 JUDGE BARRETT: It's identified as, oh  
 8 I see what you're saying, as an example.  
 9 THE WITNESS: Right.  
 10 BY MR. MACLEAN:  
 11 Q As an example of a broadcast that was  
 12 distantly re-transmitted.  
 13 A That's correct.  
 14 Q That you don't actually claim, at  
 15 least in this particular document. You don't  
 16 actually claim Willie Wilson Productions as a  
 17 claimant.  
 18 A Well, it actually says Willie Wilson  
 19 Productions, Inc. right there.  
 20 Q As the owner of the broadcast program.  
 21 A Correct.  
 22 Q Now just so that we're completely

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1 clear here, these pages are obviously not here.  
2 Is it your testimony that IPG omitted the pages  
3 when it made the filing?

4 Or is it your testimony that the  
5 Copyright Office or the Copyright Royalty Board  
6 had somehow lost the papers?

7 A With all due respect, the Copyright  
8 Royalty Board, I'm certain that the Copyright  
9 Royalty Board lost it because we've had  
10 comparable situations.

11 Q Comparable situations?

12 A Where there's been missing claims.  
13 They've been relocated, and so when I saw this or  
14 when we deduced this, then it didn't come as a  
15 complete surprise.

16 Q So what you're saying is because in  
17 your experience the Copyright Office has missed  
18 pages before. You deduced that the Copyright  
19 Office has lost these papers.

20 A Well, not on that basis alone. The  
21 other basis being that everything was sent at the  
22 same time. The exhibit for, and when I say

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1 that relation.

2 Q Just earlier today I asked you about  
3 IPG's agreement with IWV Media, right?

4 A Correct.

5 Q Which as produced to us was missing  
6 Exhibit A, right?

7 A It was missing the third of three  
8 pages. That's correct, because it was a scanning  
9 error, but this, these are hard copies that are  
10 being sent to the CRB.

11 It's not they're being scanned in and  
12 then electronically sent. So that would be the  
13 distinction. That's what I meant by this would  
14 not be a scanning error.

15 Q Let's talk a little bit about Bob Ross  
16 Inc. What did you do, well first of all, you  
17 were incarcerated when exactly? What were the  
18 dates?

19 A February 2003 through May 2004. The  
20 last six weeks being at a halfway house in San  
21 Antonio, Texas.

22 Q During this period of time, Marian

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1 everything was sent at the same time, 2008 cable  
2 was sent at the same time as 2008 satellite.

3 It's the identical exhibit. It  
4 appears as the identical exhibit with its  
5 heading. It was in the same package. Based on  
6 that I'm certain there would've been, I mean I  
7 can't imagine us just omitting Pages 4, 5, 9 and  
8 10.

9 Q Well --

10 A We're handling one document that CRB  
11 is receiving hundreds

12 Q Well, even in the context of the last  
13 few days here at this hearing, has IPG  
14 experienced some scanning errors with its  
15 documents?

16 A Has IPG experienced some scanning  
17 errors?

18 Q Yes.

19 A We've determined that there's been  
20 scanning errors in discovery. That's correct,  
21 but this isn't a scanning error. This wouldn't  
22 be a scanning error, so I'm not sure I understand

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1 Oshita was running the operations of IPG?

2 A And Lisa Galaz.

3 Q Together or separately?

4 A Separately.

5 Q When you returned from your  
6 incarceration did then you essentially take over  
7 the management of IPG?

8 A Well, I would never say I took over  
9 the management at that point. I started re-  
10 familiarizing myself with what was going on.

11 There really was very little that was  
12 occurring at that point in time. But to say took  
13 over the management, no. I wouldn't say I took  
14 over the management.

15 Q IPG, of course, filed a claim for Bob  
16 Ross Inc. for the year 2004. Is that right?

17 A Correct.

18 Q That would've been filed in July of  
19 2005?

20 A That's correct.

21 Q Did you put that claim together that  
22 was filed in 2005?

205

1 A I'm sure I reviewed it, but it  
2 would've been, July 2005, that would've been with  
3 Lisa Galaz.

4 Q Bob Ross Inc. was included on that  
5 2005 claim. Is that right?

6 A That's correct.

7 Q Actually both the 2005 joint cable  
8 claim and the 2005 joint satellite claim.

9 A That would make sense.

10 Q And I'm sorry. When I said 2005, I  
11 meant the 2004 joint cable claim, the 2004 joint  
12 satellite claim which were filed in July of 2005.  
13 Is that right?

14 A Okay. Well you had said filed in July  
15 2005, so I took it as the 2004 claim. That's  
16 correct.

17 Q What did you do, if anything, to  
18 confirm before filing those claims that IPG  
19 validly represented Bob Ross Inc.?

20 A Sure. Prior to that we looked at the,  
21 well, to put it in context because it relates to  
22 it, in July 2005 it was about six months after

207

1 Q Did you contact Bob Ross Inc. to ask  
2 them about whether there had been an extension  
3 agreement?

4 A I do not recall.

5 Q Do you typically contact claimants in  
6 advance of filing your claims to confirm whether  
7 you have continuing agreements in place?

8 A No, because if there's a continuing  
9 agreement in place then the only thing that would  
10 change whether you would include them on a joint  
11 claim or not would be if they sent a termination  
12 letter terminating, a notice of termination  
13 terminating the term.

14 That would be the only thing that  
15 would be relevant. If a notice of termination  
16 were received, then at that point you would  
17 calculate, you would look at it against the  
18 contract and calculate it to figure out whether  
19 or not the date, if there's one being identified  
20 in the notice of termination is accurate.

21 If not, then you contact the party,  
22 such as what we, well, like what we did with Feed

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1 Marian Oshita had lost her lawsuit with Lisa  
2 Galaz.

3 And she just sort of disappeared. So  
4 we didn't have her as a source of information.  
5 We did have filings she had made in the prior  
6 years. And one thing, excuse me.

7 One thing that had occurred that I  
8 think of the hundreds of agreements we have,  
9 there's only one other instance in which this  
10 exists is that we'd had three consecutive filings  
11 on behalf of Bob Ross.

12 But we didn't have the contracts with  
13 Bob Ross because they were all ones that had  
14 dealt with correspondence between Marian Oshita  
15 and Bob Ross Inc.

16 So by seeing that there had been  
17 claims for multiple consecutive years, the  
18 presumption and it was a reasonable presumption,  
19 was that it was pursuant to an extension  
20 agreement or a long term agreement with WSG and  
21 that there was a continuing obligation for IPG and  
22 make the joint claim, including Bob Ross.

208

1 the Children.

2 That's why we continue to make claim  
3 for them for the 2013 filing after we had  
4 received the letter from them. They had  
5 miscalculated. We told them they had  
6 miscalculated. They didn't object.

7 Q Let's take a look at IPG Exhibit 53.

8 A I'm sorry.

9 Q 53. Okay. If you turn to the last  
10 page of IPG Exhibit 53, which is the spreadsheet  
11 showing search results that you testified was  
12 payments made to Bob Ross Inc.

13 A Okay. That's not the last page of 53  
14 I don't think.

15 Q I had understand that's where it was  
16 --

17 A I think that 53 is a series, a variety  
18 of correspondence with Bob Ross and what that got  
19 appended to was the email of February 1, 2013.

20 Q Okay.

21 JUDGE STRICKLER: It's the fifth page  
22 down.

209

1 MR. MACLEAN: Okay. Thank you. I put  
2 it in the wrong place in mine. That's fine. If  
3 you could turn to the page entitled Search  
4 Results.

5 THE WITNESS: Okay.

6 BY MR. MACLEAN:

7 Q And these are all the payments that  
8 IPG has made to Bob Ross Inc. with the exception  
9 of the one check that Bob Ross Inc. returned. Is  
10 that right?

11 A That's correct. It's a printout of  
12 documents from our Quicken program.

13 Q Okay. And if you take a look at the  
14 bottom. The earliest date is at the bottom,  
15 payment on August 28, 2006, Check Number 1022,  
16 Bob Ross Inc.

17 IPG royalties paid is the category.  
18 Does that denote that the check itself showed  
19 that it was from IPG?

20 A I'm not certain whether the check  
21 said IPG or WSG.

22 Q Okay. So this is the first payment

210

1 that IPG made, and this would've been for the  
2 year 2001. Is that right?

3 A I'm sorry. It would've been for what?

4 Q The copyright royalty year 2001. Is  
5 that right?

6 A I have no idea. From this information  
7 you can't deduce what calendar year it applied  
8 to. There might not have been any royalties for  
9 that calendar year.

10 Q Well, there was a payment made I think  
11 you read in 2006. Correct?

12 A It says August 28, 2006.

13 Q A payment on October 3, 2007. Is that  
14 right?

15 A That's correct.

16 Q A payment on October 1, 2008.

17 A That's correct.

18 Q And then no further payments until  
19 November 21, 2011. Is that right?

20 A That's correct.

21 Q Now, did you hear Mr. Kowalski's  
22 testimony that he was paid by All Global Media

211

1 for the years 2004 and 2005?

2 A I heard him say that he received  
3 payments from All Global Media. I'm not sure if  
4 it was for those years.

5 Q Well.

6 A But I know what years we made claim.  
7 If I recall and I had looked at this, I could  
8 actually refresh my recollection because I didn't  
9 look this up.

10 There's a declaration here that we  
11 didn't admit into evidence. I know that we had  
12 payments that covered through the 2007 broadcast  
13 year.

14 And I don't recall if it started in  
15 2002 or 2001. If you want me to look, I'll look.

16 Q If you would, you're saying you need  
17 to look at your document?

18 A To recall which years these payments  
19 related to.

20 Q Okay. Look at your declaration.  
21 That's IPG 50.

22 A So it's 2001 through 2007 though I'm

212

1 not sure which of these payments applied to which  
2 particular broadcast year.

3 Q You're very clear about this, Mr.  
4 Galaz. Are you testifying that IPG has made a  
5 payment to Bob Ross Inc. that covers the cable  
6 royalty year and satellite royalty year 2004?

7 A Not from, I mean I can go back and  
8 look. No, from this information I don't know  
9 that. I know that one of them applies to 2001.

10 I know one of them applies to 2007.  
11 I'm not sure which years the others apply to. At  
12 least one applies to 2001. At least one applies  
13 to 2007.

14 Q Okay. So your testimony is you made  
15 a payment for the year 2001 to Bob Ross Inc.,  
16 right?

17 A At least one. Correct.

18 Q You made at least one payment to Bob  
19 Ross Inc. for the year 2007.

20 A That's correct.

21 Q But you cannot testify that you made  
22 at least one payment for the year 2004.

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1 A Not without checking the accountings,  
2 which I didn't bring with me.

3 Q And you cannot testify that you made  
4 a payment for the year 2005.

5 A Not without checking the accountings.  
6 I didn't realize it was an issue.

7 Q Well, I think you just said that you  
8 made payments for the years 2001 through 2007.

9 But what you really meant is you made payments  
10 for the years 2001 and 2007.

11 A That I know for certain, but there  
12 were other years other than 2001 and 2007. I  
13 don't know which ones.

14 Q If IPG made a claim for Bob Ross Inc.  
15 in 2004 and then did not receive a royalty  
16 payment for PBS for Bob Ross Inc. in 2004,  
17 wouldn't that raise a huge red flag about why IPG  
18 is not receiving a royalty check for one of its  
19 own claimants?

20 A Absolutely not, and I can explain why.

21 Q Go ahead.

22 A Because sometimes there are not re-

215

1 A Okay. Then I'm sorry. Could you ask  
2 your question again?

3 Q Wouldn't, in the situation where  
4 you've made a claim to PBS on behalf of a  
5 claimant --

6 A All right.

7 Q -- and PBS is issuing no royalties on  
8 behalf of that claimant --

9 A For that year.

10 Q -- for that year, wouldn't PBS account  
11 for that \$0 royalty by sending it, by notifying  
12 IPG that it's receiving no royalties for that  
13 claim?

14 A No, absolutely not.

15 MR. BOYDSTON: I'll object. I think  
16 it calls for speculation as to what PBS would do.

17 JUDGE BARRETT: Sustained.

18 BY MR. MACLEAN:

19 Q Turning back to IPG Exhibit 53, first  
20 page of Exhibit 53, this is the letter that Mr.  
21 Boydston received from Mr. Kowalski. Correct?

22 A Yes.

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1 transmitted broadcasts. There are other  
2 circumstances that it may not have ended up in  
3 the PBS methodology for distribution.

4 It's not all encompassing and  
5 comprehensive. So that's actually absolutely  
6 common in this industry to receive royalties one  
7 year and not receive any royalties the next.

8 I mean with the variation of literally  
9 hundreds of thousands of dollars. And we  
10 experience that on a regular basis.

11 So to have received no royalties for  
12 any particular year, if that's what occurred,  
13 which I can't verify without looking at the  
14 accountings, wouldn't have raised any suspicion.

15 Q Wouldn't PBS, in that circumstance,  
16 have accounted for \$0 paid to Bob Ross Inc. if  
17 there was simply no royalty payment to be made?

18 A I would presume what PBS would do if  
19 we made a claim and someone else made a claim --

20 (Simultaneous speaking)

21 BY MR. MACLEAN:

22 Q I'm not asking you to presume.

216

1 Q At the bottom cc'ing Steven Friedman  
2 and Marc Mangum. Correct?

3 A Correct.

4 Q The decision to cc Steven Friedman and  
5 Marc Mangum on subsequent correspondence, they  
6 were already alerted to this issue by the initial  
7 letter. Is that right?

8 A I would presume so.

9 Q So taking a look at the email dated  
10 from Brian Boydston to Walte@bobross.com, dated  
11 February 27, 2013, which is the fifth page into  
12 this exhibit.

13 Well, it might be more than the fifth  
14 page. Maybe I'll say the third page from the end  
15 of this exhibit.

16 JUDGE STRICKLER: February 27th?

17 MR. MACLEAN: Yes, Your Honor.

18 This is an email from Mr. Boydston to  
19 Mr. Kowalski of Bob Ross, is that right?

20 MR. GALAZ: Yes.

21 BY MR. MACLEAN:

22 Q And in this email, and did you

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1 instruct Mr. Boydston to send this email?

2 A I don't know if it was myself or  
3 Denise personally, but it was on our behalf. I'm  
4 fairly certain that he was just probably just  
5 following up on his own.

6 Q The first line says, I still have not  
7 heard from you following my last correspondence  
8 requesting that you forward whatever  
9 correspondence you have verifying your contention  
10 that Bob Ross, Inc. terminated its agreement with  
11 WSG by providing notice under the agreement.

12 You understand, don't you, that Bob  
13 Ross, Inc.'s contention is that the agreements  
14 were outside of the term -- of their term, is  
15 that right?

16 A Do I understand what Bob Ross's  
17 understanding is?

18 Q Yes.

19 A I'm not sure I can do anything other  
20 than --

21 Q Why would you expect to have received  
22 written notice of a termination from Bob Ross

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1 after the mandate agreements had expired?

2 A Well, receiving a notice of  
3 termination isn't the same as saying that it's  
4 outside their term. You're confusing concepts.

5 Q The next sentence says, if your  
6 organization set the required written notice, WSG  
7 shall abide by it and return the collected  
8 royalties to PBS.

9 A Right.

10 Q Is that right? Did IPG ever return  
11 the collected royalties to PBS?

12 A We never received any documents from  
13 Mr. Kowalski. So, we offered two things, we  
14 offered we would either take the 20 percent  
15 commission and that's ultimately what we did  
16 because we received no documents from them; or if  
17 they could demonstrate that there was no  
18 authority for WSG to make claim on their behalf,  
19 then we would return it all back to PBS, 100  
20 percent of it back to PBS contingent on the  
21 agreement that PBS not distribute any to Mr.  
22 Kowalski or Bob Ross, Inc. because there would

219

1 have been no authorization for it.

2 That was, as I understood, the offer  
3 that was made that the alternatives that were  
4 provided to Mr. Kowalski.

5 MR. MACLEAN: So, basically, you told  
6 Mr. Kowalski either agree to our representation  
7 and let us take our commission or we'll send all  
8 the money back to PBS and you get nothing?

9 MR. BOYDSTON: Objection, Your Honor.  
10 That misstates the evidence here or that  
11 misstates the evidence objection.

12 JUDGE BARRETT: Sustained.

13 MR. MACLEAN: Even today, you still  
14 have not returned this money to PBS?

15 MR. GALAZ: Well, we gave them a check  
16 for 80 percent of the total without any  
17 qualification as to it being full and final  
18 settlement. That's a matter of record.

19 Mr. Kowalski begrudgingly refused to  
20 cash it. I think he said here because it wasn't  
21 100 percent.

22 I think our perspective was under any

220

1 circumstance, he could always cash the check for  
2 80 percent and if there was an issue with us, he  
3 could raise it with us.

4 But, until we actually got the SDC  
5 rebuttal statement, we didn't even know whether  
6 there was, in fact, an agreement with All Global  
7 Media.

8 BY MR. MACLEAN:

9 Q Well, he returned the check to you,  
10 right?

11 A He returned the check and then  
12 continued to insist on payment of 100 percent.

13 Q He couldn't, after returning the  
14 check, he couldn't thereafter cash it, right?

15 A No, but we've then -- okay.

16 Q And you didn't, even after receiving  
17 the SDC rebuttal statement have never returned  
18 the money to PBS, right?

19 A Because at this point, I think our  
20 belief is that but for the claims that were made  
21 by WSG, by IPG, those monies wouldn't be paid.  
22 So, consequently, there would have been an

221

1 entitlement.

2           There's -- it's not clear, it's a  
3 little bit more complicated than this, but it's  
4 not clear that we wouldn't have been entitled to  
5 any portion of those monies.

6           Q     It's not clear that you would or  
7 wouldn't?

8           A     Would not have been entitled some  
9 portion of those monies. One of the issues that  
10 got touched upon was the agreement with All  
11 Global Media which, until we received the SDC  
12 rebuttal statement, Mr. Kowalski refused to  
13 provide to us.

14                We've had other circumstances where  
15 Ms. Oshita has misrepresented to parties that  
16 they were, in fact --

17           MR. OLANIRAN: Objection, Your Honor.  
18 I believe the question on the floor is whether or  
19 not IPG returned the money to PBS and --

20           JUDGE BARRETT: Sustained.

21           MR. OLANIRAN: Thank you.

22           MR. MACLEAN: Even after this

223

1           A     I'm sorry, that's the wrong one. Did  
2 you say 356?

3           MR. MACLEAN: 356 and 257.

4           MR. BOYDSTON: Your Honor, if it will  
5 assist James, we will stipulate that Bob Ross,  
6 Inc. is able to document these claims that were  
7 submitted.

8           MR. MACLEAN: I'd still like to ask  
9 him a few things on it, Your Honor.

10           JUDGE BARRETT: You may.

11           JUDGE STRICKLER: Before you do, we'll  
12 wait until the witness is turned around and ask a  
13 question.

14           MR. GALAZ: I can't find that. Is  
15 there --

16           MR. BOYDSTON: May I approach, Your  
17 Honor?

18           JUDGE BARRETT: You may.

19           JUDGE STRICKLER: Mr. Galaz, before  
20 you begin with that, I wanted to ask you just a  
21 follow-up question based on Mr. MacLean's  
22 questioning.

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1 correspondence that's in IPG Exhibit 53 and the  
2 correspondence that the SDC has submitted, IPG  
3 filed another joint claim for cable and satellite  
4 for royalty year 2013 in July of 2014, right?

5           MR. GALAZ: That is correct.

6           BY MR. MACLEAN:

7           Q     You're still asserting that IPG  
8 represents Bob Ross, Inc.?

9           A     No.

10           Q     As of July of 2014, you still asserted  
11 that IPG represents Bob Ross, Inc.?

12           A     As of July of 2013, it was working --  
13 July of '14, it was our concern that it was our  
14 obligation to continue making claim for Bob Ross,  
15 Inc. not any more than that.

16                You can always withdraw a claim, you  
17 can't revive a deadline and the concern that we  
18 had was that we would ultimately be found liable  
19 if we didn't make a claim for them.

20           Q     Let's take a look at those joint  
21 claims, in the Exhibits 356 and 357, we'll look  
22 at 356 first.

224

1                You said that you filed on behalf of  
2 Bob Ross in July of 2014 because you were  
3 concerned that you might be exposed to some  
4 liability if had an obligation to still make such  
5 claims -- file such claims and didn't do so,  
6 correct?

7           MR. GALAZ: That's right.

8           JUDGE STRICKLER: Correct. But the  
9 letter that you received on January 16th, 2013  
10 that Mr. Boydston received from Mr. Kowalski  
11 specifically says that you're not authorized to  
12 claim for Bob Ross going forward.

13                So, why would you have had any concern  
14 that you could be liable after you had received  
15 this what appears to be the unambiguous  
16 termination of any relationship that might have  
17 existed and any relationship going forward?

18           MR. GALAZ: Well, you're right about  
19 that but at the same time, I know that we've had  
20 all sorts of confusion with parties when they  
21 start dealing with post-term collection rights.

22                And we've had parties flip-flop just,



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1 I mean, even in this proceeding, you'll see  
2 exhibits that have been submitted, declarations  
3 where a party has said nearly one thing one day  
4 and another thing the next.

5 JUDGE STRICKLER: So, when you receive  
6 a letter that's unambiguous termination such as  
7 this January 16th, 2013 letter from Bob Ross, in  
8 the ordinary course of business, do you say that  
9 you disregard them because the client who has  
10 terminated you may quote, unquote, unterminate  
11 you the next day so better to be safe than sorry  
12 and just keep filing claims?

13 MR. GALAZ: Well, first of all, I  
14 wouldn't say that there's necessarily an ordinary  
15 course of business because terminations are  
16 extraordinarily rare. That just hasn't happened  
17 on very many occasions.

18 But, we've had circumstances, let me  
19 give you an example, where we've had a minimum of  
20 a three year term for a party and within one  
21 year, they've sent a termination notice to us  
22 saying immediately write me out.

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1 Well, in that circumstance, it's both  
2 an issue of our entitlement for the three years  
3 and our obligation for the three years.

4 And we've had other circumstances  
5 where parties have said, well, you know, I told  
6 you that I wanted you to make a claim even though  
7 there was, you know, indicators from them that  
8 they wanted us to cease and desist, you know.  
9 And that's been very frustrating as well.

10 So, yes, even in the face of a letter  
11 that you would suggest would be just unambiguous,  
12 I think we have to look at each and every one of  
13 those circumstances and just try to do what would  
14 be the safe thing to do.

15 And it was truly because of what I had  
16 said, you can always withdraw an application, you  
17 cannot revive a deadline.

18 JUDGE STRICKLER: So, you say you have  
19 to look at each one in particular. So, what was  
20 there in particular about the Bob Ross  
21 termination of January 16th, 2013 that led you to  
22 continue to make a claim in July of 2014?

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1 MR. GALAZ: If there had been, in  
2 fact, a -- and this is one of the things that  
3 I've gotten into -- it was complicated by the  
4 involvement of All Global Media.

5 We had prior circumstances where we  
6 had an IPG represent a claimant, and this came  
7 about very innocently, you might say, contact us  
8 or we contacted them only to find out that they  
9 had signed a contract for All Global Media having  
10 been expressly misled and it wasn't just through  
11 correspondence like Mr. Kowalski said he  
12 experienced, but actually communications,  
13 conversations with Marion Oshita where she  
14 indicated we're just changing our name to All  
15 Global Media, here's a new contract for you to  
16 sign.

17 So, the party thought they were  
18 continuing on with us even though there's  
19 technically a signed contract with All Global  
20 Media and no termination with us.

21 JUDGE STRICKLER: Is one of those  
22 claimants that you're referring to by way of

228

1 comparison, is that claim represented in this  
2 proceeding?

3 MR. GALAZ: It was Chesler Perlmutter  
4 Productions. They never sent IPG a termination  
5 but they then signed an agreement with All Global  
6 Media which, when they found out the details and  
7 the circumstances surround it, they basically  
8 sent a letter of record, you know, to the --  
9 excuse me, a letter to the address of record to  
10 All Global Media.

11 So, I think that, in a short answer,  
12 I think, yes, but in the program suppliers  
13 category.

14 JUDGE STRICKLER: And is that a  
15 document in evidence in this proceeding, as far  
16 as you know?

17 MR. GALAZ: No, I'm certain it's not.

18 JUDGE STRICKLER: Thank you.

19 MR. GALAZ: I'm certain it's not.

20 JUDGE STRICKLER: Okay.

21 MR. MACLEAN: Take a look at MPAA

22 Exhibit -- actually, my first question relates to

229

1 both MPAA Exhibit 356 and 257.  
2 If you take a look at Ms. Vernon's  
3 signature line on each of these two documents, is  
4 there any reason that you are aware of that these  
5 two signatures look so similar?

6 MR. GALAZ: I thought she was using a  
7 stamp because, I mean Ms. Barnett -- Judge  
8 Barnett, excuse me, had referenced that because  
9 they look very similar to me. So, but she said  
10 that she doesn't have one.

11 BY MR. MACLEAN:

12 Q Are you aware of whether she does or  
14 not?

14 A I have no idea, but she said she  
15 didn't.

16 MR. MACLEAN: And taking a look at --  
17 and we'll start with Exhibit 356, IPG's joint  
18 claim for cable retransmission 2013. Taking a  
19 look at Exhibit A --

20 JUDGE STRICKLER: Which document are you on,  
21 Counsel?

22 MR. MACLEAN: MPAA 356.

231

1 A Well, no, but for the reasons that I  
2 stated.

3 Q And you didn't excise Feed the  
4 Children at line 60?

5 A Well, what you're not seeing here is  
6 the response -- correct, correct.

7 Q I did notice on the first page at line  
8 18 you did add a legal name with respect to Benny  
9 Hinn Ministries, now it says Royal Hearing Center  
10 Church, Inc. d/b/a Benny Hinn Ministries,  
11 correct?

12 A All this came in the context of the  
13 '99 cable proceedings where a challenge was being  
14 made.

15 Q You wanted to remove that issue?

16 A Correct.

17 Q I noticed you still haven't corrected  
18 the typo Ministeries which was also mentioned in  
19 the 1999 case.

20 A Well, then it's a typo.

21 Q So, for 14 years now, we've had this  
22 same typo appearing in the same spreadsheet?

230

1 JUDGE STRICKLER: Thank you.

2 MR. MACLEAN: Taking a look at Exhibit  
3 A, first thing, the line at the top, the title of  
4 the exhibit, Exhibit A, it's the Worldwide  
5 Subsidy Group, LLC Joint Claim for 2012  
6 Retransmission Royalties. Is there a reason that  
7 you passed the direct claim for 2012  
8 retransmission royalties to the 2013 joint claim?

9 MR. GALAZ: I am certain this is the  
10 first I've ever noticed that. Typically, what  
11 will occur in the preparations, we'll take from  
12 the prior year whatever claims we have to make on  
13 behalf of parties and then we will excise from  
14 that any claimants that have forwarded notices of  
15 termination, that which, it's not often, but  
16 notices of termination that would take effect  
17 during this broadcast year and would add in any  
18 new entities from whom rights had been  
19 contracted.

20 BY MR. MACLEAN:

21 Q But you didn't excise Bob Ross, Inc.  
22 at line 23?

232

1 A I'm sorry --

2 MR. BOYDSTON: Objection, Your Honor,  
3 argumentative, irrelevant.

4 JUDGE BARRETT: Sustained.

5 MR. MACLEAN: It's basically,  
6 literally the same sheet year after year after  
7 year that you go through and maybe make  
8 corrections, maybe not?

9 MR. GALAZ: Make revisions, absolutely  
10 make revisions.

11 BY MR. MACLEAN:

12 Q Now, I think you said in response to  
13 one of the Judge Strickler's questions that it's  
14 easier to -- it's easy to withdraw claim once  
15 it's been made.

16 Let's take at SDC Exhibit 601.

17 A 601?

18 Q Yes. So, 601 is IPG's joint satellite  
19 claim for the year 1999, is that right?

20 A That's correct.

21 Q And let's take a look at the last page  
22 of SDC 601 about two-thirds of the way down the

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1 column, you'll see the joint claim on behalf of  
2 Tracee Productions.  
3 A That's correct.  
4 Q Is that right? Which was included as  
5 part of your 1999 joint satellite claim, is that  
6 right?  
7 A Correct.  
8 Q IPG has never filed a notice  
9 withdrawing Tracee Productions from its joint --  
10 1999 joint satellite claim, right?  
11 A No, we exclude it from the petitions  
12 to participate.  
13 Q But you didn't withdraw the claim, did  
14 you?  
15 A It's the same consequence. So, it is  
16 --  
17 Q Did you withdraw the claim or not?  
18 A No, it is withdrawing the claim. If  
19 you do not include a name of an entity on a  
20 petition to participate, then their rights are  
21 forfeited, so it's the same as withdrawing the  
22 claim.

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1 Q Did you file a notice withdrawing the  
2 claim because --  
3 A We did not file a notice amending the  
4 joint claim that was filed for 1999, rather, we  
5 modified that in a claim on behalf of any entity  
6 appearing therein by the drafting of the petition  
7 to participate that does not include Tracee  
8 Productions.  
9 MR. MACLEAN: Can you turn to SDC  
10 Exhibit 605?  
11 JUDGE STRICKLER: 605?  
12 MR. MACLEAN: Yes, Your Honor.  
13 JUDGE STRICKLER: Thank you.  
14 MR. GALAZ: Okay.  
15 MR. MACLEAN: You know what, Your  
16 Honor, I apologize, I've already covered this in  
17 my prior examination, so I won't over that again.  
18 If you could turn to SDC Exhibit 607.  
19 MR. GALAZ: Okay.  
20 MR. MACLEAN: This is IPG's --  
21 JUDGE STRICKLER: Before you begin,  
22 Counsel, I think it's restricted, but I'm not

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1 sure.  
2 JUDGE BARRETT: It's marked as  
3 restricted on the document.  
4 MR. MACLEAN: I guess I'd better  
5 request that the room be cleared, Your Honor.  
6 JUDGE BARRETT: Okay. Anybody in the  
7 room who has not signed a confidentiality  
8 agreement, please wait outside for a few minutes.  
9 MR. MACLEAN: SDC 607 is IPG's mandate  
10 agreement with Salem Baptist Church of Chicago,  
11 Inc., correct?  
12 MR. GALAZ: Yes.  
13 BY MR. MACLEAN:  
14 Q It covers only the cable and satellite  
15 years, royalty years 2001, is that correct?  
16 A That's correct.  
17 Q You have no other agreement covering  
18 any years for Salem Baptist Church, is that  
19 right?  
20 A Let me check. My 115 is -- I'm sorry,  
21 I was looking at Exhibit 115 but it's a little  
22 misleading because it was prepared in connection

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1 with the MPAA rebuttal statements, so it's not  
2 applicable. My recollection is that no, that the  
3 extension agreement couldn't be located.  
4 JUDGE STRICKLER: When you say the  
5 extension agreement couldn't be located, is it  
6 your testimony that there was an extension  
7 agreement or you didn't know if there was an  
8 extension agreement?  
9 MR. GALAZ: Me personally, I didn't  
10 know but Salem Baptist Church says that there was  
11 and that was the top -- that was the subject of  
12 their declaration.  
13 MR. MACLEAN: And, Your Honor, I'm  
14 about to address that declaration. The  
15 declaration itself is not restricted, so I think  
16 we could invite the --  
17 JUDGE BARRETT: Thank you.  
18 MR. MACLEAN: -- gallery back in.  
19 JUDGE STRICKLER: What exhibit is it?  
20 MR. MACLEAN: Thank you, Your Honor.  
21 I'm now going to ask you to look at IPG Exhibit  
22 72.

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1 MR. GALAZ: Okay.

2 BY MR. MACLEAN:

3 Q And if I could ask you to turn -- and  
4 this is the declaration of Veronica Abney, Salem  
5 Baptist Church of Chicago, Inc. which I believe  
6 was admitted into evidence earlier today.

7 Mr. Galaz, did you draft this  
8 declaration?

9 A I drafted the form. I sent the form  
10 to everybody, but it was predominately drafted by  
11 individuals at Salem Baptist Church.

12 Q If I could ask you to turn to  
13 paragraph six of this declaration and Ms. Abney  
14 says, eventually, I determined that I could not  
15 locate a copy of the second executed contract and  
16 resolved that the agreement had simply been  
17 misplaced over the prior decade or possibly even  
18 thrown away in light of its age and the fact that  
19 no royalties have been generated for several  
20 years.

21 Nonetheless, I recall the existence of  
22 such a contract and the circumstances of

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1 engagement.

2 Is that basically what you were just  
3 referring to when you said that Salem Baptist  
4 Church told you that they had a continuation  
5 agreement?

6 A That's correct.

7 MR. MACLEAN: And take a look at the  
8 next sentence, paragraph seven.

9 Following the execution of the  
10 replacement contract, our organization has  
11 engaged in extensive correspondence with IPG.

12 What is the replacement contract that  
13 Ms. Abney is referring to here?

14 MR. BOYDSTON: Objection, Your Honor,  
15 it calls for speculation. This is her  
16 declaration.

17 JUDGE BARRETT: Overruled.

18 MR. GALAZ: I'm not certain.

19 MR. MACLEAN: Was there?

20 MR. GALAZ: There -- go ahead.

21 BY MR. MACLEAN:

22 Q Was there a replacement contract

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1 signed between IPG and Salem Baptist Church?

2 A No.

3 Q So, unlike with IWV Media, I never  
4 created a replacement contract to sign with Salem  
5 Baptist Church?

6 A No, but I know what this refers to.

7 Q All right, could you explain?

8 A This refers to one of the items in the  
9 form that was sent to them. They reproduced one  
10 that where there was a replacement contract and  
11 it was with IWV Media, I just presumed that it  
12 was an oversight on their part and they didn't  
13 take out that particular provision.

14 Q So, you provided them with a  
15 declaration that IWV Media provided?

16 A As a form of the -- correct, as a form  
17 of what needs to be generated to explain the  
18 circumstances.

19 JUDGE STRICKLER: So, if I understand  
20 this correctly, she signed a declaration when she  
21 talks about an attached document that was never  
22 attached?

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1 MR. GALAZ: Well, she refers to her  
2 replacement contract and I know she says it's  
3 attached, but --

4 JUDGE STRICKLER: She does talk about  
5 an attached document in her --

6 MR. GALAZ: I mean, no, that's  
7 actually -- there is an attachment and that's a  
8 separate matter.

9 JUDGE STRICKLER: Okay.

10 MR. GALAZ: That's the acknowledgment  
11 of representation.

12 JUDGE STRICKLER: Okay. So, the  
13 replacement --

14 MR. GALAZ: The replacement contract  
15 is an error. The reference to the attached  
16 document, that's not an error. The attached  
17 document that's she's referring to is the  
18 acknowledgment of representation.

19 We simply wanted parties in that case  
20 to confirm that it was executed under penalty of  
21 perjury because we thought that it might be  
22 challenged here in the event that we submitted

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1 acknowledgments of representation and they  
2 weren't signed under penalty of perjury.

3 MR. MACLEAN: Now, when you provided  
4 this -- the form from which this declaration was  
5 prepared, did you provide the IWV Media  
6 declaration that contained that language relating  
7 to a replacement contract?

8 MR. GALAZ: I'm certain I did.

9 BY MR. MACLEAN:

10 Q Or did you provide a declaration that  
11 was titled as this one is, Declaration of  
12 Veronica Abney, Salem Baptist Church of Chicago,  
13 Inc.?

14 A No, I know I didn't include  
15 Declaration of Veronica Abney because I didn't  
16 think that she was the appropriate contact.  
17 Actually, they then directed me to her.

18 The contact that I thought had the  
19 primary dealings was actually Denise Rogers who  
20 was the individual that signed the one contract  
21 that we do have in our possession.

22 After it went into their possession,

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1 not the other stuff.

2 I also sent them the Declaration of  
3 Maureen Millen in either a draft or final form, I  
4 don't recall for the purpose of them just seeing  
5 what kind of material you need to put into a  
6 declaration to give a comprehensive understanding  
7 to the reader.

8 Q So, the inclusion in paragraph seven  
9 of this language following execution of the  
10 replacement contract, was that your error?

11 A That was -- I would say that was their  
12 error from their misunderstanding presumably of  
13 what that meant within the IWV Media declaration.

14 Q I did want to ask you about this  
15 acknowledgment of representation that there is an  
16 attachment here, acknowledgment of representation  
17 signed by Veronica Abney, Salem Baptist Church.

18 Are you at that acknowledgment of  
19 representation?

20 A Yes.

21 Q So, you obtained acknowledgment of  
22 representation like this, not from all, but from

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1 they came back to us and said no, Veronica was  
2 the one that was dealing with Marion Oshita. And  
3 that's why she actually says throughout here, she  
4 actually refers to directing that the first  
5 contract they executed.

6 Q I'm sorry, say the last part again, I  
7 didn't --

8 A Veronica Abney was the primary contact  
9 with Marion Oshita. I didn't know this, but this  
10 was, in fact, the case.

11 She didn't sign the first contract.  
12 She, in fact, directed someone else to sign the  
13 contract and that's what she refers to, I was  
14 just noticing like in paragraph two.

15 So, your question was whether I had  
16 submitted something to them that said Declaration  
17 of Veronica Abney, no, I didn't.

18 Q Did you send them something that said  
19 Declaration of Maureen Millen?

20 A No, well, I sent them something that  
21 said Declaration of Denise Rodgers and some of  
22 this was in here, the form for the most part, and

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1 some of your claimants, is that right?

2 A That's correct.

3 Q And if you take a look at this  
4 acknowledgment of representation, it says -- and  
5 their all in substantially this form, correct  
6 with respect to the content of it?

7 A Correct.

8 Q And they all say to the effect of, as  
9 this one says, by execution of this document, I  
10 hereby confirm and acknowledge the undersigned  
11 claimants engagement of Worldwide Subsidy Group,  
12 LLC d/b/a Independent Producers Group for the  
13 collection of U.S. cable and satellite  
14 retransmission royalties for the following years  
15 in which IPG has made claim on behalf of the  
16 undersigned, correct?

17 A Correct.

18 Q Now, it says the undersigned claimants  
19 engagement. But it doesn't say when this  
20 engagement began, is that right?

21 A . In this document, no, it doesn't. It  
22 was drafted for all IPG claimants.

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1 Q And none of these acknowledgments of  
2 representation that you've put in state that IPG  
3 did, in fact, represent to the claimants at the  
4 time that IPG filed its claims, it's joint  
5 claims, is that right?

6 A That was not the purpose, so, no, they  
7 did not. It was the equivalent of a short form  
8 copyright assignment just to be bare bones in  
9 making a single confirmation. No details  
10 regarding the contract, the commission, anything  
11 else.

12 JUDGE STRICKLER: Mr. Galaz, I have a  
13 question. Did you know why staying with IPG P72,  
14 the certification, excuse me, the declaration is  
15 executed on November 22, 2014. The  
16 acknowledgment of representation is dated April  
17 16th. Do you know why there's a difference in  
18 those dates?

19 MR. GALAZ: Yes, we submitted  
20 acknowledgments of representation in preparation  
21 for these proceedings and, as I testified before,  
22 several of those circumstances, we pursued it in

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1 we've seen enough coming to hearings things being  
2 dismissed simply because they were not under  
3 penalty of perjury, so we just wanted to make  
4 extra certain with those particular documents  
5 that there was no issue with them.

6 JUDGE STRICKLER: You can proceed,  
7 Counsel.

8 MR. MACLEAN: Thank you, Your Honor.  
9 Turn to SDC Exhibit 609. Your Honor,  
10 I note that the SDC 609 is restricted. I request  
11 if you want to close that?

12 JUDGE BARRETT: You know, I'm losing  
13 it here. Let's take our afternoon recess for 15  
14 minutes and maybe I can get brain cells back  
15 together again.

16 MR. MACLEAN: Thank you, Your Honor.  
17 (Whereupon, the above-entitled matter  
18 went off the record at 2:53 p.m. and resumed at  
19 3:15 p.m.)

20 JUDGE BARRETT: Please be seated.

21 Mr. MacLean?

22 MR. MACLEAN: Thank you, Your Honor.

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1 the event that the claimant had one or more of  
2 its claims dismissed in the 2000 and 2003  
3 proceedings.

4 Salem Baptist Church did have some of  
5 its claims dismissed in the 2000 and 2003  
6 proceedings. So, they were one of those that we  
7 needed or wanted to get an acknowledgment of  
8 representation so that there would be no issue  
9 about IPG's representation.

10 We did all of those back in April.  
11 The declaration that was signed right here was  
12 only in response to arguments that were made by  
13 the SDC in the written rebuttal statements, so  
14 consequently, it came after mid-October of this  
15 year.

16 And as I was saying, one of the -- the  
17 reason we had made a reference, there were some,  
18 if you look through some of our exhibits, they  
19 are just purely a declaration for the purpose of  
20 saying, hey, I did sign this acknowledgment of  
21 representation previously, and by the way, it's  
22 under penalty of perjury just because, as I said,

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1 Before we proceed, my next line of  
2 inquiry, I'd like to go back and cover a couple  
3 of things from last time around.

4 Mr. Galaz, if you could take a look  
5 again at IPG Exhibit 53.

6 MR. GALAZ: Okay

7 BY MR. MACLEAN:

8 Q And if you'd take a look at the second  
9 page of this exhibit, email from email address  
10 brianb@ix.netcom.com to Walt@BobRoss.com dated  
11 February 1, 2013.

12 A Do I see it? Yes, I see it.

13 Q I'm just directing your attention to  
14 it, thank you.

15 This email address,  
16 brianb@ix.netcom.com, that is the email address  
17 for Brain Boydston?

18 A That's correct.

19 Q To your knowledge, has this always  
20 been Mr. Boydston's email address?

21 A I think he may have had others, I  
22 can't recall.

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1 Q But this, to your knowledge, this  
2 email address doesn't belong to somebody other  
3 than Brian Boydston?

4 A He's the only one I've ever known with  
5 that email address.

6 Q And you ever had access to the account  
7 that belongs to this email address,  
8 brianbix.netcom.com?

9 A No.

10 Q No, you have not?

11 A Never.

12 Q With regard to the payments made by  
13 WSG or IPG to Bob Ross, Inc., each of these  
14 payments is the amount received from PBS minus  
15 the commission that IPG or WSG was retaining for  
16 itself, is that right?

17 A Correct, these are net amounts. These  
18 are checks that have been generated according to  
19 our Quicken financial records.

20 Q Did you ever hear -- did you hear Mr.  
21 Kowalski's testimony that some years it was a 20  
22 percent commission, some years it was a 30

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1 actual expenses, it would have been far in excess  
2 for PBS royalties of the five percent that we  
3 did, but just didn't want to take more than five  
4 percent attributable to expenses.

5 Q So, the amount of your commission can  
6 vary from year to year because you add on some  
7 additional percentages to cover expenses?

8 A That's correct, that's part of the  
9 agreement.

10 Q But you don't actually account for  
11 those expenses?

12 A Well, we could but in this particular  
13 one, the expenses are still not fully expended  
14 and it would be far, far in excess of what we've  
15 ever attributed to in.

16 In this case, we attributed five  
17 percent but, we know it would have been  
18 significantly more.

19 Q The expenses for 2008 --

20 A Yes.

21 Q -- table, in satellite royalties are  
22 not yet fully expended?

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1 percent commission?

2 A I heard him say something about that.

3 Q Is that accurate? Was it 20 percent  
4 some years and 30 percent other years?

5 A I'm certain that I checked the  
6 accountings and didn't look at that issue. That  
7 would surprise me. I think he may be confusing  
8 it but I don't know.

9 Q It might be correct or it might not be  
10 correct?

11 A I would presume that it's incorrect,  
12 but I can't verify unless I actually had the  
13 accountings in front of me.

14 Q Why would you presume it's incorrect?

15 A Because the accountings would be  
16 fairly stable. The accountings to them, I think  
17 are for 15 percent plus expenses and I know for  
18 prorated and all the expenses aren't in.

19 And I know that, for instance, with  
20 regard to like this last accounting that was for  
21 -- that I think we deducted 20 percent. It was  
22 because we knew that if we had deducted the

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1 A Well, we're here in these proceedings  
2 and they cover 2008 satellite and 2008 cable.  
3 So, that's correct with regard to if we were to  
4 try to isolate it to just PBS and the amount of  
5 money that is expended in order to do -- acquire  
6 data on PBS broadcasts, then, yes, that would be  
7 far in excess of five percent I would think.

8 Q So, in essence, you charge your PBS  
9 category claimants expenses incurred in  
10 connection with these proceedings for program  
11 suppliers and devotional claims?

12 A No, I don't think that's what I was  
13 saying.

14 Q Well, you collect more in excess  
15 amount of commission in order to cover those  
16 expenses?

17 A We attribute a certain amount to  
18 expenses and I'm not sure if I completely  
19 understand your question or I got confused on  
20 your question.

21 Q And maybe I didn't understand your  
22 answer, but I understood you to be saying,

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1 correct me if I'm wrong, that the expenses aren't  
2 all in yet because you're still incurring  
3 expenses in connection with these proceedings?

4 A In connection with these proceedings.  
5 For PBS royalties, I'd say that they're all in,  
6 it would just be significant.

7 Q So, with respect to the claims  
8 submitted by PBS or your claim submitted to PBS  
9 and then PBS's claims or collection of royalties  
10 from the Contract Royalty Board, you submitted  
11 claims for Bob Ross, Inc. in both cable and  
12 satellite, is that right?

13 A I don't think PBS has satellite  
14 royalties.

15 Q Well, that's what I was going for.  
16 You submitted claims for Bob Ross, Inc. for cable  
17 and satellite --

18 A Correct.

19 Q -- in each of the years at issue in  
20 these proceedings and even on through 2013,  
21 right?

22 A Correct.

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1 Q Or at least each of the years from  
2 2001 through 2013, right?

3 A Okay, correct.

4 Q In both cable and satellite, right?

5 A Correct.

6 Q You've only claimed Bob Ross in the  
7 Public Broadcasting category, correct?

8 A Well --

9 Q Is that right or not?

10 A I think you have to be more specific  
11 with your question, you're saying have we claimed  
12 them for only PBS for what particular year and  
13 I'm kind of, I'm sorry, I'm at a loss, first of  
14 all, how this ties together with anything, but  
15 for what year and with regard to cable or  
16 satellite, could you just be a little bit more  
17 clear?

18 Q Okay, and I don't want to be unclear,  
19 so for every from 2001 on --

20 A Sure.

21 Q -- up to and through and included 2013

22 --

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1 A Okay.

2 Q IPG submitted a joint cable claim that  
3 included Bob Ross, Inc. and a joint satellite  
4 claim that included Bob Ross, Inc., correct?

5 A Correct.

6 Q IPG has only claimed Bob Ross, Inc. in  
7 the Public Broadcasting category, is that right?

8 A Well, I think, no, I would say well,  
9 first of all when you make a joint claim. You  
10 don't distinguish what category that you're  
11 making claim for.

12 So, theoretically, Bob Ross could have  
13 claims in program suppliers. They could have  
14 claims in sports. They could have claims in  
15 whatever.

16 So, you don't necessarily identify  
17 when you're making a filing with the joint claim  
18 what, not necessarily, you don't have to at all  
19 except in the very general nature what category  
20 of claims are being claimed for.

21 You don't have to, on a joint claim,  
22 specify for a particular joint claimant what

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1 category of claims are being made claim for.

2 Q So, at the time you filed doing  
3 satellite claims on behalf of Bob Ross, Inc., you  
4 didn't check to see if Bob Ross, Inc. had any  
5 programming that would have been compensable on a  
6 satellite claim, is that right?

7 A At that time, no. At the time that we  
8 filed the joint claim, no, we hadn't done the  
9 research yet to determine one way or the other  
10 whether they had a claim in one category or  
11 another.

12 Q Now, with respect to PBS, I believe  
13 you testified before that you just take PBS's  
14 allocation formula, is that right?

15 A That's correct.

16 Q They're the ones who do the work in  
17 figuring out how much each claimant receives each  
18 year, right?

19 A Well, they're the ones that do the  
20 allocation.

21 Q And they're the ones who figure out  
22 what the allocation will be, right?



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1 A For PBS.

2 Q Right. And with respect to the  
3 creation of your claim form each year, you just  
4 use the same form year after year and you don't  
5 strike out Bob Ross, Inc., right?

6 A We wouldn't strike out any entity  
7 unless there was a notice of termination that  
8 affected it and we had parties that we've  
9 contracted with to add to the claim.

10 Q So, what expenses does IPG have with  
11 respect to pursuing claims in the Public  
12 Broadcasting category?

13 A Well, we acquire broadcast data for  
14 programs. There is various filings that require  
15 the engagement of counsel, lots of filings. Most  
16 filings require the engagement of counsel now  
17 because of a regulation that requires any entity  
18 be required to be represented by counsel. So,  
19 there's lots of expenses.

20 MR. MACLEAN: Now, with respect to  
21 each of the claim forms or at least each of the  
22 claim forms for 2000 and on, the claim forms

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1 MR. MACLEAN: The declarations that  
2 IPG has submitted, I'll just do this quickly, on  
3 behalf of IWV Media, Envoy Productions and Salem  
4 Baptist Church, you had correspondence with each  
5 of this entities relating to their respective  
6 declarations, is that right?

7 MR. GALAZ: I'm certain I did, I  
8 didn't just talk to them over the phone.

9 BY MR. MACLEAN:

10 Q None of that correspondence was  
11 produced to the SDC, is that right?

12 A None of it was requested.

13 Q Is it right that none of it was  
14 produced?

15 A Yes.

16 Q Did you inform IWV Media that its  
17 claims in the 2000 to 2003 case were dismissed?

18 A I do not recall but I'm fairly certain  
19 that I did because I recall Maureen Millen being  
20 very, very upset about it. She was very upset  
21 asking me what would be basic questions for  
22 anyone here about who it is that's asserting that

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1 contain the declaration that says, the  
2 undersigned declares under penalty of law that he  
3 or she is duly authorized by the copyright owners  
4 identified here and to make this filing on their  
5 behalf.

6 And further declares under penalty of  
7 law that all statements contained hereunder are  
8 true, complete and correct to the best of the  
9 undersigned knowledge and information and belief  
10 and are made in good faith.

11 Was that declaration included in each  
12 of IPG's claim forms from 2000 and on?

13 MR. BOYDSTON: Your Honor, I'm going  
14 to object. I didn't ask any questions about  
15 these two exhibits, the claim forms. So I think  
16 it's beyond the scope of my direct.

17 MR. MACLEAN: Well, it goes to --

18 MR. BOYDSTON: All sides say that the  
19 form simply speaks for itself.

20 MR. MACLEAN: Your Honor, I'll  
21 withdraw the question.

22 JUDGE BARRETT: Thank you.

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1 she doesn't have entitlement to these royalties.

2 Q Did you inform Envoy Productions that  
3 its claims in the 2000/2003 cable proceeding were  
4 dismissed?

5 A I don't recall if I had any  
6 conversations with them. I think Denise, my  
7 recollection was Denise was corresponding with  
8 them predominately.

9 MR. MACLEAN: Did you have -- did you  
10 inform Salem Baptist Church that its claims in  
11 the 2000/2003 cable proceedings were dismissed?

12 HL: I'm going to object to this also,  
13 it's beyond the scope. I certainly asked about  
14 these entities but nothing about the 2000/2003  
15 proceedings.

16 JUDGE BARRETT: Sustained.

17 MR. MACLEAN: Could you turn to SDC  
18 Exhibit 609?

19 Oh, right, this is where we were when  
20 we took a break, Your Honor, and I'll move that  
21 the exhibit is restricted.

22 JUDGE BARRETT: Oh, so if you are in

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1 the room and have not signed a confidentiality  
2 agreement, we'll ask that you wait outside,  
3 please?  
4 This is 609, is that right?  
5 MR. MACLEAN: SDC 609, that's correct.  
6 JUDGE BARRETT: Thank you.  
7 MR. MACLEAN: Mr. Galaz, SDC 609  
8 consists of IPG's mandate agreements with Billy  
9 Graham Evangelistic Association for the cable and  
10 satellite royal years 2001, 2002 and 2003, is  
11 that right?  
12 MR. GALAZ: Yes.  
13 BY MR. MACLEAN:  
14 Q If you'll take a look at the first one  
15 for the year 2001, this is signed on behalf of  
16 Joel B. Aarsvold.  
17 A I think it's Aarsvold.  
18 Q I'm sorry, by Joel --  
19 A Aarsvold.  
20 Q Aarsvold, thank you.  
21 A A-A-R-S-V O-L-D.  
22 Q Thank you. On behalf of Billy Graham

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1 Evangelistic Association by Joel V. Aarsvold and  
2 by IPG by, I can't read it, but do you know whose  
3 signature that is?  
4 A That's Marion Oshita's.  
5 Q If you turn to the next agreement for  
6 the year 2002, signed again on behalf of Billy  
7 Graham Evangelistic Association by Joel V.  
8 Aarsvold, but no signature by IPG, right?  
9 A That's correct.  
10 Q And if you turn to the next mandate  
11 agreement, this time signed on behalf of Billy  
12 Graham Evangelistic Association by Stephen G.  
13 Scholle or Scholle? S-C-H-O-L-L-E, is that how  
14 you read it?  
15 A That's how I read it.  
16 Q Correct?  
17 A I said that's how I read it.  
18 MR. MACLEAN: I mean is --  
19 MR. BOYDSTON: Objection, Your Honor,  
20 the document speaks for itself.  
21 JUDGE BARRETT: Sustained.  
22 MR. MACLEAN: But not signed by IPG,

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1 is that right?  
2 MR. GALAZ: There's no signature by  
3 IPG, that's correct.  
4 BY MR. MACLEAN:  
5 Q And these are the only versions of  
6 these mandate agreements that IPG found in its  
7 business records and produced to the SDC, is that  
8 right?  
9 A Actually, these weren't in our  
10 business records. These weren't in our business  
11 records initially, they were provided to us  
12 subsequently by BGEA, by Billy Graham  
13 Evangelistic Association. We, I don't think had  
14 any of these in our files. We might have had the  
15 first one, I'm not certain, but I'm certain we  
16 didn't have the mandate agreements for 2002 or  
17 2003.  
18 Q So you don't have any other copies of  
19 these agreements, for example that IPG had  
20 actually signed.  
21 A That's correct.  
22 MR. MACLEAN: If you can turn to SDC

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1 Exhibit 611. Oh, yes, the next exhibit is not  
2 restricted, so we can reopen the courtroom.  
3 JUDGE BARRETT: Okay, thank you.  
4 MR. MACLEAN: If you'd like now.  
5 SDC 611 is a declaration of George R.  
6 Chip Grange, II and attaches -- if you'd take a  
7 look at Attachment A it's an email from David Joe  
8 to Arnie Lutzker, Barry Gottfried,  
9 worldwidesg@aol.com and moshita@bigplanet.com.  
10 MR. BOYDSTON: Your Honor, I'm going  
11 to object to any questions on this. It's beyond  
12 the scope, I did not mention any of this in my  
13 direct.  
14 JUDGE BARRETT: Well, technically, Mr.  
15 Boydston, your examination of Mr. Galaz was  
16 cross. Oh, no, I'm sorry, I'm sorry.  
17 Mr. MacLean, would you like to  
18 respond?  
19 MR. MACLEAN: Your Honor, Mr. Galaz  
20 testified on direct regarding Marion Oshita and  
21 the circumstances under which she left IPG and  
22 then Mr. Galaz has an awareness of her efforts to

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1 essentially engage IPG's clients. And this email  
2 goes directly to that and relates to IPG's  
3 awareness of Ms. Oshita's efforts to engage some  
4 of IPG's clients.

5 MR. BOYDSTON: Your Honor, for one  
6 thing, Mr. MacLean objected to Mr. Galaz giving  
7 an extended answer about Mr. Oshita and cut it  
8 off, so I still think it's beyond the scope.

9 JUDGE BARRETT: I believe you did  
10 raise irrelevance objection, Mr. MacLean.

11 MR. MACLEAN: Your Honor, I raised --  
12 well, I think I raised the best evidence  
13 objection to Mr. Galaz's testimony concerning the  
14 content of the non-competition agreement with Ms.  
15 Oshita.

16 JUDGE BARRETT: Objection overruled.

17 MR. BOYDSTON: Also relevance.

18 JUDGE BARRETT: Okay, overruled.

19 MR. MACLEAN: Taking a look at this  
20 exhibit that's attached to SDC 611, you'll see in  
21 the to line, one of the addresses is  
22 worldwidesg@aol.com which I believe you testified

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1 Q Which one is that?

2 A I think it was Kenneth Copeland  
3 Ministries.

4 Q So, you understand Mr. Joe to be an  
5 authorized agent of Kenneth Copeland Ministries  
6 and perhaps Benny Hinn and Creflo Dollar?

7 A Well, no, I don't know that at all  
8 about Benny Hinn and Creflo Dollar. I know that  
9 with regard to the Kenneth Copeland Ministries  
10 agreement, he was in that instance authorized to  
11 execute a document on their behalf because  
12 they've repeatedly confirmed that in these  
13 proceedings.

14 Q Now, it state -- starting with the  
15 fourth paragraph of this email, does IPG have  
16 this email in its records?

17 A At this point, I have no idea.

18 Q You didn't look for it after seeing  
19 this exhibit?

20 A I -- I'm sorry, did I look for it  
21 after seeing this exhibit? I didn't go back and  
22 look for it, no.

266

1 already is IPG's email address, is that right?

2 MR. GALAZ: That's correct.

3 BY MR. MACLEAN:

4 Q Did you produce this email to the SDC  
5 in discovery?

6 A I don't think it was requested, so I  
7 would presume no.

8 Q If you could take a look at the, let's  
9 see, one, two, three, four, the fifth -- start  
10 with the fourth paragraph of this email.

11 First of all, who is David Joe?

12 A David Joe is counsel to Kenneth  
13 Copeland Ministries. I think he was at one point  
14 the counsel for Benny Hinn Ministries. I think  
15 he's an advisor but not counsel to Creflo Dollar  
16 Ministries.

17 Q He's also signatory to at least a  
18 couple of IPG's representation agreements with  
19 respect to a couple of those entities, is that  
20 correct?

21 A No, I think he's signatory to one  
22 agreement.

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1 Q The fourth paragraph says, in any  
2 event, we said is that a reference to Lisa Galaz,  
3 who you understand to be a reference to Lisa  
4 Galaz?

5 A That's what I understand.

6 MR. BOYDSTON: Your Honor, I'm going  
7 to object to this. This has nothing to do with  
8 Ms. Oshita, this paragraph.

9 JUDGE BARRETT: It's in evidence, Mr.  
10 Boydston. Go ahead, Mr. MacLean.

11 MR. MACLEAN: In any event, Lisa --  
12 the paragraph says, in any event, Lisa, as you  
13 know, the agreements are outside their term and  
14 terminable and the subject matter at hand is the  
15 1999 cable distribution. This needs to be put to  
16 rest immediately and after it is, you should, in  
17 all candor, expect that the termination  
18 provisions will be invoked.

19 Did any of Mr. Joe's clients or the  
20 claimants in connection with Mr. Joe, connected  
21 with Mr. Joe, terminate their agreements with  
22 IPG?

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1 MR. GALAZ: No, none have ever  
2 terminated any agreement with IPG.

3 BY MR. MACLEAN:

4 Q Did they file claims -- did All Global  
5 Media file claims on their behalf?

6 A My understanding is that they did it  
7 at least for Kenneth Copeland Ministries because  
8 Kenneth Copeland Ministries, Ms. Harbour,  
9 addresses that within her declaration.

10 Q So, All Global Media did file a claim  
11 but at least on behalf Kenneth Copeland  
12 Ministries?

13 A Well, and she denies that they ever  
14 entered into any agreement with All Global Media,  
15 but, yes, I think she says that brought to their  
16 attention through the SDC, you know, in these  
17 proceedings that All Global Media filed claims on  
18 behalf of Kenneth Copeland Ministries.

19 MR. MACLEAN: The next paragraph says,  
20 to further clarify points, Lisa and others no new  
21 agreement has been entered into that would  
22 replace the ones made the subject of this

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1 already entered into settlement agreements for  
2 prior years. Kenneth Copeland had come in as a  
3 client prior to the other two entities. That's  
4 just -- that's my understanding of it.

5 Q You don't take this email to be a  
6 reference to the potential termination or the  
7 prospect of termination of IPG's representation  
8 agreements --

9 A Well --

10 MR. MACLEAN: -- with Benny Hinn,  
11 Creflo Dollar and Kenneth Copeland?

12 MR. BOYDSTON: Your Honor, I'll  
13 object. I think it calls for speculation.  
14 Obviously, Mr. Galaz did not write this email.

15 JUDGE BARRETT: Sustained.

16 MR. MACLEAN: Do you have -- does IPG  
17 have two representation agreements with Kenneth  
18 Copeland Ministries?

19 MR. GALAZ: No, no, we have one.

20 BY MR. MACLEAN:

21 Q Take a look at the next paragraph and  
22 I'll go to the top of the second page of this

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1 discussion, that is the sole agreement with him  
2 and Creflo and the second of two agreements with  
3 Copeland.

4 What is Mr. Joe referring to here?

5 MR. BOYDSTON: Your Honor, I object.  
6 What does this have to do with direct testimony?  
7 I see nothing.

8 JUDGE BARRETT: Your objection is  
9 noted, Mr. Boydston. Go ahead, Mr. MacLean.

10 MR. MACLEAN: What's Mr. Joe referring  
11 to here?

12 MR. GALAZ: I couldn't be certain, but  
13 I think he's referring to the settlement  
14 agreements that are being proposed in this  
15 correspondence, that's one of the possibilities.  
16 The likely possibility that I read it to mean.

17 BY MR. MACLEAN:

18 Q Where it says that is the sole  
19 agreement with him and Creflo and the second of  
20 two agreements with Copeland, you understood that  
21 to mean the 1999 settlement agreement?

22 A Right, because at that point, we had

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1 email.

2 First full sentence starting with  
3 several years ago, several years ago, Marion's  
4 efforts -- do you understand that to be a  
5 reference to Marion Oshita?

6 A Yes.

7 Q Several years ago, Marion's efforts  
8 repaid an enormous shameful debt your company  
9 owed, which I attribute to Raul. Do you  
10 understand what he's referring to in that  
11 sentence?

12 A I understand what he's referring to,  
13 yes.

14 Q What is he referring to?

15 A He was referring to an amount that he  
16 thought was owed that he misunderstood was not  
17 owed and became a non-issue as evidenced by the  
18 fact that they continued to engage us. I think  
19 when it was cleared up, I can tell you Mr. Joe  
20 has profusely apologized to me for comments he's  
21 made to me and about me and that's what he was  
22 referring to.

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1 Q What was the misunderstanding?

2 A The misunderstanding had to do with

3 timing of payments. It had to do with royalties

4 that he was contacted about from Barry Fried, who

5 was the predecessor of Mr. Harrington at your law

6 firm.

7 Mr. Harrington informed him that WSG

8 had withheld monies from them when, in fact, they

9 just hadn't been accounted to because of the

10 timing of the accountings at that point.

11 So, Mr. Joe, at that point, this was

12 several years ago whenever it was, 2002 I

13 believe, 2002 or 2003, was under the impression

14 that IPG just hadn't accounted to Kenneth

15 Copeland Ministries when, in fact, the accounts

16 just hadn't come to you yet.

17 So, when they were paid, then the

18 accountings were made and he then, at least at

19 some point, finally accepted that well, maybe it

20 was just an issue of timing. So, that's what

21 that has to do with.

22 Q For what years were those accountings?

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1 A For which royalty years? I have no

2 idea, no idea.

3 Q You have an understanding of what the

4 misunderstanding was but you don't know what

5 royalty years were at issue?

6 A Yes, I mean because this issue has

7 been raised multiple times, I know when it

8 occurred, I just don't know which royalty years it was

9 relevant to. I know that, well, as I said, no, I

10 don't. The short answer is I don't know which

11 royalty years it applied to.

12 Q Did you have any discussions with Mr.

13 Joe or anybody else with regard to Kenneth

14 Copeland Ministries, Benny Hinn and Creflo Dollar

15 as to why All Global Media made claims on their

16 behalf for 2004 cable and satellite royalty

17 years?

18 A I don't recall. I've had

19 conversations with Mr. Joe about All Global

20 Media, I don't recall if was for any particular

21 year.

22 Q Did you discuss with Mr. Joe that All

275

1 Global Media, which is All Global Media is Ms.

2 Oshita's company, is that right?

3 A That's correct.

4 Q Did you discuss with Mr. Joe that All

5 Global Media had filed claims on behalf of his

6 clients?

7 A Oh, yes.

8 Q What was that discussion?

9 A Well, I asked him if there was any

10 truth to it and he unambiguously said that it was

11 absolutely false, that he had never given any

12 authorization on behalf of any of his clients to

13 All Global Media, comprehensive.

14 Q When did you have that discussion with

15 Mr. Joe?

16 A Within the last year or two. I don't

17 know exactly when. I mean I really can't put a

18 date on it much more specifically than that.

19 MR. MACLEAN: Now, IPG pays a finders

20 fee to Mr. Joe for bringing these claimants to

21 IPG, is that right?

22 MR. BOYDSTON: Objection, Your Honor,

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1 this is beyond the scope of direct.

2 JUDGE BARRETT: Sustained.

3 MR. MACLEAN: If I could just have one

4 moment, Your Honor?

5 No further questions, Your Honor.

6 JUDGE BARRETT: Thank you.

7 Mr. Olaniran?

8 CROSS EXAMINATION

9 BY MR. OLANIRAN:

10 Q Good afternoon, Mr. Galaz.

11 A Good afternoon.

12 MR. OLANIRAN: I'm sorry, may I

13 proceed, Your Honor?

14 JUDGE BARRETT: Yes.

15 MR. OLANIRAN: Mr. Galaz, you

16 testified that I think sometime last week, you

17 testified that the titles that you cross-claimed

18 between the program suppliers category and the

19 devotional claimants category, you did so because

20 there a pending ruling in the '99 proceeding as

21 to the definition of what belongs in the

22 devotional category versus some all the

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1 categorius, do you remember that?

2 MR. GALAZ: When you said cross-

3 claimed, I mean I'm not sure exactly what you're

4 saying claiming in both categories --

5 BY MR. OLANIRAN:

6 Q Yes.

7 A -- the devotional and program

8 suppliers?

9 Q Exactly. The titles you identified as

10 belonging in either the program suppliers

11 category or the devotional category.

12 A Well, if you're talking about the

13 exhibit we were looking at before, then the

14 reference is really two part.

15 It could be either -- if there's a

16 column that says Phase I category and it has more

17 than one program category, for instance,

18 devotional program suppliers, it could be for a

19 couple of different reasons.

20 It could be either that there's an

21 issue as to the categorization of the program

22 because it was at the time that the document was

279

1 Q Have you done anything about those?

2 A Have we resolved to -- I'm sorry, I'm

3 using full question.

4 Q All right. Have you since gone back

5 to figure out where those titles belong, where

6 they properly belong? In the latter, I'm asking

7 you about the latter category.

8 A Have we done more to figure out where

9 they go?

10 Q Yes.

11 A It's a circumstance where if there's

12 two programs and one's in one category and one's

13 in the other, so, I'm at a loss of understanding.

14 Q Well, I see what you mean. You would

15 have one line with the same title but the title

16 actually goes in two different works?

17 A Correct.

18 Q And they go into different -- they go

19 their separate ways?

20 A Correct.

21 Q Okay. I understand now.

22 A And that was the misunderstanding that

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1 created and the time that the filings were made

2 for '99, 2009 satellite and 2004 and 2009 cable.

3 The definition was unresolved for

4 devotional programming. It was a matter of

5 contention in the '99 cable case and we hadn't

6 received the decision yet. That's one

7 circumstance.

8 The other circumstance could be that

9 there's two program names, one in one category

10 and one in the other.

11 Q In the latter instance, did you --

12 have you since the filing of the direct case and

13 debits to resolve the instance where there's --

14 A I'm sorry, since the filing of what?

15 Q Since the filing of the direct case,

16 the direct statements.

17 A Okay.

18 Q And they were to resolve the ones

19 where there's, I think you said two titles and

20 one could be in either one of the categories, the

21 latter explanation you had just a minute ago.

22 A Have we --

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1 we were seeing chronically come up by the SDC in

2 the document we had produced in discovery.

3 Q Fair enough. Now, with the former

4 category which -- are those titles which because

5 of the '99 proceeding, you weren't sure where

6 they went. So, there's some of those still exist

7 as we speak today, correct?

8 Where because of the '99 -- because of

9 the pending decision in the '99 proceeding, you

10 couldn't determine what category those titles

11 belong?

12 A Off the top of my head, the only

13 situation which that's involved was Feed the

14 Children. But I think all the others that's

15 really why we're here today or because we had

16 thought that, for instance, the onboard

17 productions programming, we were asserting

18 belonged in the devotional programming category.

19 Willie Wilson Productions programming

20 belonged in the devotion programming category.

21 But if you were to look at that document that was

22 created well before the May direct statements,

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1 you'll see two Phase I categories for that  
2 programming specifically because it hadn't been  
3 resolved yet.

4 So, at this point, I think that's what  
5 we thought would be resolved by these  
6 proceedings. Our belief being that the onboard  
7 productions programming which is a subsidiary of  
8 I believed were in church and Willie Wilson  
9 Productions both belong in the devotional  
10 programming category.

11 Q Now, I think it was in response to a  
12 couple of questions from Judge Strickler about  
13 why you filed a claim for Bob Ross for the 2013  
14 royalty year in 2014.

15 And one of your responses was that you  
16 felt an obligation to do so because very often  
17 claimants tell you you're terminated and then  
18 they change their minds and so on and so forth.  
19 Do you recall that?

20 A Basically, I've seen flip-flops.

21 Q And in fact -- I'm sorry?

22 A I said we've seen flip-flops on --

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1 A Well, I'll use Tracee Productions as  
2 an example.

3 With Tracee Productions, the method  
4 that we followed was not to go back and file an  
5 amended July claim, but instead, just not to  
6 pursue it. So, when we started getting the  
7 Federal Register requests for filing of  
8 ascertainment of controversy and petition to  
9 participate back when you had to actually  
10 identify the parties that you were going to  
11 ultimately represent, we would just withdraw  
12 Tracee Productions and we did that, I think, as  
13 far back as 2001.

14 Q When you said --

15 A So, you were asking about withdrawing  
16 a claim, that is the means by which a claim for a  
17 party is effectively withdrawn. Since not  
18 identifying a party on a petition to participate  
19 has the same effect as the party never having  
20 been included on the July claim. It's a  
21 forfeiture.

22 MR. OLANIRAN: I move to strike that

282

1 yes.

2 Q And I think your comment was that you  
3 can always withdraw a claim but you can't revive  
4 a deadline, is that a fair characterization of  
5 what you said?

6 A That's correct. That's correct.

7 Q Can you recall the last time IPG  
8 withdrew a claim?

9 A I would imagine that every year we do  
10 at some point. It's not very often because  
11 there's not very many instances in which we've  
12 received notices of terminations, so --

13 Q And when you withdraw the claim you  
14 follow --

15 A Oh, I'm sorry, when you're saying  
16 withdraw a claim, you mean a claim that's already  
17 been made as opposed to removing a claimant from  
18 the July claim?

19 Q I mean withdrawing a claim that you've  
20 filed -- withdrawing the claimant from a joint  
21 claim that you've filed with the copyright  
22 office?

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1 response, Your Honor. That calls for a legal  
2 conclusion.

3 MR. BOYDSTON: Well, Your Honor, he  
4 did ask the question as to how it happens and  
5 he's explaining his understanding how this  
6 forfeiture occurs if you don't include a party on  
7 the petition to participate, which I think is a  
8 fair answer.

9 MR. OLANIRAN: Not withdrawing a claim  
10 -- withdrawing a claim does not, in our view at  
11 least, have the same effect as not pursuing a  
12 claim. I think they have completely different  
13 consequences.

14 MR. BOYDSTON: That's the part that I  
15 object to.

16 JUDGE BARRETT: The motion is denied.

17 JUDGE STRICKLER: What different  
18 effects would they have? You said you often have  
19 the same effect? What different effects are you  
20 representing that they have?

21 MR. OLANIRAN: Well, I mean when you  
22 file the claim, you're required at the point that

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1 you file the claim, you're certifying that you're  
2 duly authorized to file the claim.

3 And once you file the claim, you're  
4 taking that action and, if in fact you're not  
5 duly authorized, then you're in violation of the  
6 statute.

7 Now, what you do afterwards is a  
8 completely different story. You have made a  
9 violation, so choosing not to pursue it does not  
10 absolve you of the initial sin, which is a  
11 violation of the statute.

12 I'm sorry, were you finished with your  
13 response?

14 MR. GALAZ: I think so.

15 BY MR. OLANIRAN:

16 Q Well, besides Tracee Production, the  
17 way that you've chosen to handle claims, the  
18 flip-flop claims, if you will, or claims that  
19 you've found out -- that you find out subsequent  
20 to the filing of the claim that they claimants do  
21 not -- they need to know.

22 The claimants that do not have claims,

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1 Q Have you ever informed the copyright  
2 office or the Copyright Royalty Board that you  
3 wish to strike a claimant on behalf of whom you  
4 had already filed?

5 A I don't recall us ever having done  
6 that.

7 Q Now, with respect to the actual filing  
8 of claims, let's focus specifically on the claim  
9 that was filed in 2014 for the 2013 royalty year.  
10 Are you with me?

11 A Yes.

12 MR. OLANIRAN: So, what exactly --  
13 what role did you play in the filing of those  
14 claims? I know that they were signed by Ms.  
15 Vernon, but what exactly was your role then? Did  
16 you complete all of the claims or what exactly  
17 was the role you played in that?

18 MR. BOYDSTON: Objection, Your Honor,  
19 this is beyond the scope of direct and it was  
20 covered previously in the MPAA's case-in-chief,  
21 they asked that same exact question.

22 JUDGE BARRETT: Sustained.

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1 after you file the claims, the way that you've  
2 chosen to handle that is by simply choosing not  
3 to pursue the claims, correct?

4 A Well, I'm trying to come up with an  
5 example in my mind, but all those that are coming  
6 to mind first hand involved foreign  
7 registrations. So, I'm not sure if one comes to  
8 mind with regard to the United States. So, I'm  
9 not sure how to answer that.

10 Q Well, back to my original question  
11 then, has there ever been a situation where you  
12 file the claim and then you find out that after  
13 the you filed the claim, after -- let me start  
14 all over again.

15 Do you recall the situation where you  
16 filed a claim and then you come back and inform  
17 the copyright office, the Copyright Royalty  
18 Board, that you are actually withdrawing a joint  
19 claim of -- a former claim that you filed?

20 A I don't think we've ever filed an  
21 amended joint claim. When I say the joint claim,  
22 I'm referring to claims that are filed in July.

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1 MR. OLANIRAN: Mr. Galaz, will you  
2 please turn to Exhibit 356?

3 MR. GALAZ: Okay.

4 BY MR. OLANIRAN:

5 Q And just flip to the second page of  
6 that exhibit.

7 A Okay.

8 MR. OLANIRAN: And I think Ms. Vernon  
9 testified that the handwritten part, particularly  
10 the boxes are your writing, is that right?

11 MR. BOYDSTON: Objection, that was Ms.  
12 Vernon's testimony, so this goes --

13 JUDGE BARRETT: I'm sorry.

14 MR. BOYDSTON: That's okay. I stopped  
15 when I realized you're back.

16 Objection, beyond the scope of direct.  
17 He's referring to Ms. Vernon's testimony three  
18 days ago which, obviously, is beyond the direct I  
19 had of Mr. Galaz.

20 MR. OLANIRAN: Just a little bit of  
21 leeway, I mean I just need a few more.

22 JUDGE BARRETT: If you can tie it in,



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1 Mr. Olaniran, then do so.  
 2 MR. OLANIRAN: Okay.  
 3 Well, you testified earlier today that  
 4 the signature on Exhibit 356, that's Ms. Vernon's  
 5 signature, right?  
 6 MR. GALAZ: That's correct.  
 7 BY MR. OLANIRAN:  
 8 Q Okay. Let's go to 357 which is the --  
 9 this sounds like a claim for a royalty year 2013.  
 10 A Okay.  
 11 Q And that's also Ms. Vernon's signature  
 12 on that, is that right?  
 13 A That's correct.  
 14 Q Okay. Now, do you have Exhibit 302?  
 15 I'm sorry, Exhibit 302 in front of you?  
 16 A Okay.  
 17 MR. OLANIRAN: And I needed to count  
 18 about six pages from the back from the last page  
 19 -- from the last sheet in that exhibit. Count  
 20 about six sheets from the back and that should  
 21 take you to the 2009 satellite claim.  
 22 MR. BOYDSTON: Your Honor, I'm going

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1 to object to questions about this because I asked  
 2 him no questions about this exhibit or this  
 3 material. So, it's beyond the scope of direct.  
 4 MR. OLANIRAN: This is a follow-up  
 5 from the questions that were --  
 6 JUDGE BARRETT: Overruled, I'm trying  
 7 to give Mr. Olaniran an opportunity to tie this  
 8 together.  
 9 MR. OLANIRAN: Just three more  
 10 questions and I'll be there.  
 11 JUDGE BARRETT: All right.  
 12 MR. OLANIRAN: Are you there?  
 13 MR. GALAZ: The --  
 14 BY MR. OLANIRAN:  
 15 Q The 2009 --  
 16 A -- 2009 satellite royalty claim?  
 17 Q -- satellite royalty claim.  
 18 A Yes.  
 19 Q Are you there?  
 20 A Yes.  
 21 Q And if you flip to the second page,  
 22 that's also Ms. Vernon's signature?

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1 A Yes.  
 2 Q Okay. And now, let's go three more  
 3 pages into the document from that same page and  
 4 you should be looking at 2008 satellite.  
 5 A Three pages further back?  
 6 JUDGE BARRETT: Toward the front.  
 7 MR. OLANIRAN: Further front. Thank  
 8 you, Your Honor. And if you flip to the second  
 9 page, flip to that page, you'll see, this should  
 10 be the 2008 satellite royalty.  
 11 MR. GALAZ: Okay.  
 12 JUDGE STRICKLER: Can you give the page  
 13 you're looking? You're at the signature pages?  
 14 MR. OLANIRAN: Signature pages.  
 15 JUDGE STRICKLER: And so you're  
 16 looking at the one that's dated beneath Denise  
 17 Vernon's signature 7/28/2009?  
 18 MR. OLANIRAN: Correct, Your Honor,  
 19 thank you for that.  
 20 JUDGE STRICKLER: Of this -- okay,  
 21 yes, I've got it, thank you.  
 22 MR. OLANIRAN: And that's Ms. Vernon's

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1 signature, correct?  
 2 MR. GALAZ: That's correct.  
 3 MR. OLANIRAN: Okay. So now --  
 4 MR. BOYDSTON: Your Honor, I renew my  
 5 objection, this about the signatures.  
 6 First of all, they're in the record.  
 7 Second of all, the issue about Ms. Vernon's  
 8 signatures, I asked nothing about.  
 9 MR. OLANIRAN: I have two more  
 10 questions and that's it.  
 11 JUDGE BARRETT: Your objections are  
 12 noted, Mr. Boydston.  
 13 MR. BOYDSTON: Thank you, Your Honor.  
 14 JUDGE BARRETT: And noted as  
 15 continuing.  
 16 MR. OLANIRAN: And so, let's go  
 17 another one, two, three, four, five, another six  
 18 pages into the document.  
 19 JUDGE STRICKLER: Going backwards  
 20 towards the front?  
 21 MR. OLANIRAN: Towards the front, yes.  
 22 That's terrible I say it.

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1 And this should be looking at the  
2 signature page of the 2007 satellite claim.  
3 MR. GALAZ: Okay.  
4 BY MR. OLANIRAN:  
5 Q Do you see that?  
6 A Yes.  
7 Q Now, do you -- and that's the claim  
8 that was signed on July 22, 2008. Now, do you  
9 see the signature line?  
10 A Yes.  
11 Q And now, is that also Ms. Vernon's  
12 signature?  
13 A Yes.  
14 MR. OLANIRAN: And do you -- can you  
15 tell if it's different from the other ones? All  
16 the ones that we have seen previously?  
17 MR. BOYDSTON: I object, this is a  
18 question about handwriting analysis that is  
19 beyond anything I questioned this witness about.  
20 JUDGE BARRETT: Is that it, Mr.  
21 Olaniran?  
22 MR. OLANIRAN: Just one more with

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1 respect to 2007 cable returned royalties.  
2 JUDGE BARRETT: Sustained. I think  
3 we're there. Go ahead. Change the subject, Mr.  
4 Olaniran.  
5 MR. OLANIRAN: You also mentioned that  
6 when you're filing a claim that you don't know at  
7 the time you file the claim whether the claimant  
8 is going to have a claim in one category versus  
9 another, correct?  
10 MR. GALAZ: Not necessarily, that's  
11 correct. And we found circumstances such as in  
12 these proceedings where we weren't familiar that  
13 particular program should be in one category as  
14 opposed to another.  
15 BY MR. OLANIRAN:  
16 Q So, in the case of Bob Ross when you  
17 filed the satellite claim, even you thought  
18 perhaps he could have claims in other categories  
19 which he could have compensable claims in  
20 categories other than PBS, correct?  
21 A Yes, in one in particular.  
22 Q And in all of the years that you filed

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1 claims for Bob Ross and in all the years for  
2 which you paid Bob Ross, has Bob Ross, Inc. ever  
3 had a claim outside of the PBS category?  
4 A Well, we wouldn't know that until we  
5 got the full amount of data and specifically with  
6 Bob Ross, that program, The Joy of Painting is  
7 broadcast on PBS but the concern that -- and what  
8 we've seen with other PBS programming is that it  
9 may end up on Canadian Originated programming and  
10 by virtue of it not being on the PBS network, it  
11 actually falls into programs suppliers category  
12 because it's on Canadian Originating Stations.  
13 So, with him -- I keep saying him, but  
14 with Bob Ross, Inc., it was a possibility that  
15 even though it was broadcast in the United States  
16 that they show The Joy of Painting and it was on  
17 the PBS network, there's always a possibility  
18 that it could have been on a Canadian Originating  
19 Station, yet once we got the data, we verified  
20 that that wasn't the case.  
21 Q My question goes to the years for  
22 which you compensated Bob Ross. Did you ever

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1 compensated Bob Ross in four programs other than  
2 programs they aired on PBS?  
3 A Well, we haven't received any  
4 distributions for any of those other years,  
5 that's what we're here for, this proceeding.  
6 So, the short answer is no.  
7 MR. OLANIRAN: That's all the  
8 questions I have, Mr. Galaz. Thank you.  
9 REDIRECT EXAMINATION  
10 BY MR. BOYDSTON:  
11 Q Mr. Galaz, in regard to Feed to  
12 Children, did IPG inform Feed the Children that  
13 it was going to go ahead and make July filings  
14 for Feed the Children in July of 2014 for the  
15 calendar year 2013?  
16 A Yes, we did following their early July  
17 notice of termination, we responded to them and  
18 informed them that they had misread the contract  
19 and this is what the contract says and it  
20 explicitly said that we would be making claim and  
21 there was no response.  
22 JUDGE STRICKLER: If I may, is there

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1 a document to that effect or was that orally?  
 2 MR. GALAZ: I think it's already in  
 3 evidence.  
 4 MR. BOYDSTON: Please take a look at  
 5 Exhibit 126.  
 6 JUDGE STRICKLER: IPG 126?  
 7 MR. BOYDSTON: IPG 126, yes. That's  
 8 a letter of July 10, 2014 from myself to Mary  
 9 Rasenberger. Mr. Galaz, looking at that  
 10 document, was this the notification of which you  
 11 were referring?  
 12 MR. GALAZ: Yes.  
 13 MR. BOYDSTON: Nothing further, Your  
 14 Honor.  
 15 REDIRECT EXAMINATION  
 16 MR. MACLEAN: Mr. Galaz, did you  
 17 inform Bob Ross, Inc. that you were making a  
 18 claim on its behalf for royalty year 2012 in July  
 19 of -- I'm sorry, royalty year 2013 in July of  
 20 2014?  
 21 MR. BOYDSTON: Your Honor, that's what  
 22 I asked him and he already answered.

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1 MR. MACLEAN: It's very similar to the  
 2 question that Mr. Boydston asked and Mr. Galaz  
 3 answered.  
 4 JUDGE BARRETT: What's the objection?  
 5 MR. BOYDSTON: I said asked and  
 6 answered. I thought that was the exact same  
 7 question I asked, if not, then I'm confused what  
 8 the question was.  
 9 MR. MACLEAN: It was exactly the same  
 10 question, Your Honor, but substitute the Bob  
 11 Ross, Inc. for Feed the Children.  
 12 MR. BOYDSTON: Oh, I'm sorry.  
 13 JUDGE BARRETT: Overruled.  
 14 MR. GALAZ: I don't think so.  
 15 MR. MACLEAN: No further questions.  
 16 MR. BOYDSTON: Nothing further, Your  
 17 Honor. IPG rests its response to the rebuttal of  
 18 the SDC.  
 19 JUDGE BARRETT: Mr. Galaz, you may  
 20 step down.  
 21 MR. GALAZ: Thank you.  
 22 MR. BOYDSTON: With regard to IPG's

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1 rebuttal of the SDC there are ten documents  
 2 numbered IPG 1 through 10 and the SDC has agreed  
 3 to stipulate to their entry and I'd just offering  
 4 that up to get that confirmed and then move that  
 5 they be entered into evidence.  
 6 MR. BOYDSTON: I would also note  
 7 they're all filings with the CRV.  
 8 MR. MACLEAN: I have no objection to  
 9 the exhibits, Your Honor.  
 10 JUDGE BARRETT: Exhibits 1 through 10  
 11 inclusive are admitted.  
 12 (Whereupon, the above-entitled  
 13 documents are admitted as IPG Exhibit  
 14 Nos. 1 through 10.)  
 15 MR. BOYDSTON: Thank you, Your Honor.  
 16 We have no witnesses to call and we rest.  
 17 JUDGE BARRETT: Anything further from  
 18 anyone? Okay, we will be at recess until 9:00 in  
 19 the morning. I don't have immediately to hand --  
 20 how much time each has left.  
 21 Oh, I'm sorry, you're scheduled an  
 22 hour for opening and an hour for closing,

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1 correct?  
 2 MR. MACLEAN: We scheduled it, Your  
 3 Honor, we agreed upon an hour total each for  
 4 opening and closing.  
 5 JUDGE BARRETT: Oh, all right. So,  
 6 you would like to know what you have left for  
 7 your closing or do you know?  
 8 MR. MACLEAN: We know, I think.  
 9 JUDGE BARRETT: Okay.  
 10 MR. MACLEAN: But we'll --  
 11 JUDGE BARRETT: No, no, no, if you  
 12 know why don't you tell me?  
 13 MR. BOYDSTON: Well, I think that when  
 14 we're supposed to be keeping track, I kept track  
 15 and by my records, the SDC used three minutes. I  
 16 believe the SDC -- my calculation anyway was the  
 17 SDC used three minutes, MPAA used five and I used  
 18 ten.  
 19 JUDGE BARRETT: Okay. That is  
 20 consistent with my memory. No? Yes?  
 21 MR. OLANIRAN: We'll take that, Your  
 22 Honor.

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1 JUDGE BARRETT: Okay. So, Mr.  
2 Boydston, you used ten, so you'll have up to 50.  
3 Mr. Olaniran, you will have up to 55  
4 or Ms. Plovnick, whoever's doing that.  
5 Mr. MacLean, you will have up to 57.  
6 MR. BOYDSTON: Your Honor, I'll just  
7 make a proposal because we're going to be filing  
8 as we always do, extensive post-trial statements  
9 of conclusions of fact and law, I would be  
10 willing to dispense with the closing because we  
11 essentially do that in writing anyway. I don't  
12 know if anyone feels that way or not.  
13 MR. MACLEAN: Actually, Your Honor, I  
14 was just about to stand up and say the opposite.  
15 I don't believe that in this proceeding we have  
16 an Order for filings of conclusions or findings  
17 of facts and concluding with law.  
18 And I also believe that given the  
19 schedule that we have coming, we are going to  
20 have a very difficult time doing that unless we  
21 modify the schedule which judging from the fact  
22 that you're shaking your head, I mean I take that

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1 the Board is not inclined to do that.  
2 MR. BOYDSTON: I had forgotten that we  
3 didn't have an Order for that. It's just that we  
4 always ended doing it, so I was assuming.  
5 JUDGE BARRETT: Right. We have not  
6 asked for proposed findings and conclusions.  
7 This is a preliminary hearing and we might have  
8 asked for them once before in a preliminary  
9 hearing, but to be honest, the concern of the  
10 Judges is that we can get working on this as soon  
11 as possible. We have webcasters just, you know,  
12 we have everything just kind of queued up for the  
13 next several months.  
14 And so, rather than wait several weeks  
15 for proposed findings and conclusions, I think we  
16 would rather just get started. So, a closing  
17 argument would be very helpful in that regard.  
18 MR. BOYDSTON: Your Honor, may we  
19 request that conclusions of law and fact be  
20 ordered? I guess I make a formal request for  
21 that because I think it is important to organize  
22 the issues to do that in addition to closing

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1 arguments.  
2 JUDGE BARRETT: Any party who wishes  
3 to do so, may submit written proposed findings of  
4 fact, never mind the conclusions of law, we'll  
5 see if we can figure that out.  
6 MR. BOYDSTON: Is there a deadline or  
7 a --  
8 JUDGE BARRETT: Yes, well, I'm just --  
9 I was just getting ready to say how long do you  
10 think that would take if you decided to do it?  
11 MR. BOYDSTON: Transcripts, we're  
12 informed, won't come until the 22nd of December.  
13 So, if it could be sometime, obviously, after  
14 that otherwise, we won't be able to make  
15 reference to the transcripts.  
16 MR. MACLEAN: Your Honor, I think this  
17 is a reason not to have one in this case. We  
18 just -- there's just not time in the schedule to  
19 permit this and I would point out that, with  
20 respect to preparation of rebuttal statements,  
21 this is not a minor task to go through the huge  
22 volumes of data and the programs and everything

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1 like that, and I'm talking about like the  
2 computer programs, the code.  
3 I mean there's a lot of work that goes  
4 into the rebuttal statements in this case. We  
5 can't do it on a dime.  
6 JUDGE BARRETT: You're referring to  
7 the next set of rebuttal statements that are due  
8 from you in 30 minutes?  
9 MR. MACLEAN: It feels like that, Your  
10 Honor.  
11 JUDGE BARRETT: Yes.  
12 JUDGE STRICKLER: When is the  
13 deadline? I don't have it in front of me.  
14 JUDGE BARRETT: It's March -- February  
15 or March.  
16 MS. PLOVNIK: February, Your Honor.  
17 JUDGE BARRETT: February.  
18 MR. MACLEAN: Right.  
19 JUDGE STRICKLER: When in February?  
20 MS. PLOVNIK: I think it's the 27th  
21 of February, but you can double check.  
22 JUDGE BARRETT: We're going to

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1 dispense with written proposed findings in this  
2 case. For this hearing, we'll just dispense with  
3 written proposed findings.

4 Organize your closing.

5 MR. BOYDSTON: I'm sorry, Your Honor,  
6 so may we still do it even if it has to be done  
7 before the 22nd?

8 JUDGE BARRETT: It would not be  
9 beneficial to us. We're already organizing and  
10 divvying up the workload and I just don't think  
11 it will be very helpful.

12 MR. BOYDSTON: All right, is that to  
13 say that we're not allowed to file? I'm just  
14 trying to make sure --

15 JUDGE BARRETT: You're not allowed,  
16 that's correct.

17 MR. BOYDSTON: I'm not allowed to file  
18 conclusions, okay.

19 JUDGE BARRETT: So, we will see you at  
20 9:00 in the morning. Thank you.

21 (Whereupon, the above-entitled matter  
22 went off the record at 4:19 p.m.)

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